

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET. AL.,

Plaintiffs,

-v-

Case Number: 12-10285

RICHARD SNYDER, ET. AL.,

Defendants.

/ VOLUME 1 - AM SESSION

BENCH TRIAL
BEFORE THE HONORABLE BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE
100 U. S. Courthouse & Federal Building
231 West Lafayette Boulevard West
Detroit, Michigan 48226
TUESDAY, FEBRUARY 25, 2014

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1 Detroit, Michigan
2 Tuesday, February 25th, 2014
3 (At or about 9:15 a.m.)
4 (Excerpt of Proceedings.)

8 MS. STANYAR: Good morning, your Honor.

9 THE COURT: Good morning.

10 MS. STANYAR: This case is about marriage
11 equality, and it's also about the well being of children.
12 We have a rare opportunity in this case to rid ourselves of
13 two laws that hurt so many people so deeply. And we have an
14 opportunity to help children, a lot of children, some of
15 the most vulnerable children in our society. I know that I
16 speak on behalf of my co-counsel that this is a privilege
17 and a honor to be standing here trying this case before you
18 today.

25 We're going to show you in this case through the

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1 testimony that marriage is central to life in America. It
2 promotes mental, physical and emotional health. It provides
3 economic strength and security. And most important,
4 marriage brings stability to families. It helps children
5 immensely.

6 The adult plaintiffs are a loving couple, deeply
7 committed to each other. By all accounts they are wonderful
8 and caring parents, parents who have made unbelievable
9 sacrifices to bring these ailing, abandoned special-needs
10 children into their home.

11 Your Honor by now is very familiar with April and
12 Jayne and the children. The parties have actually entered
13 into a stipulation which respect to the facts. Their
14 character, their history is not in dispute. I'll talk a
15 little bit more about them later.

16 Your Honor has framed the issues for us. We are
17 to focus on the rationales offered by State defendants, the
18 justifications advanced for these laws. Providing children
19 with biologically connected role models of both genders
20 that are necessary to foster healthy psychological
21 development; forestalling the unintended consequences that
22 would result from the redefinition of marriage, tradition
23 or morality; and promoting the transition of naturally
24 procreated relationships into stable unions.

25 We'll be addressing numbers two, three, and four

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1 with our marriage historian witness, Professor Nancy Cott.
2 Her qualifications, she is a leading expert in the country
3 on the history of marriage. Her book, "Public Vows" is a
4 textbook reading in any college or graduate school on the
5 history of marriage. She testified in the Perry trial in
6 California. She was qualified as an expert. Her testimony
7 was credited.

8 First, she'll explain that marriage is a civil
9 institution. She will testify that in the United States
10 marriage is created, authorized and regulated by the
11 government. While different faiths have their own religious
12 rights of marriage, and religious figures can officiate
13 civil ceremonies it is the civil law that determines the
14 legal validity of marriage.

15 Even today marriage is tied to citizenship. You
16 are not married under the law without a government marriage
17 license. She'll talk about the underlying purposes of
18 marriage over the course of history. Historically, marriage
19 was used as a vehicle to govern the population. It provided
20 more or less a chain of command for the government to
21 control the population. The husband was the head of the
22 household, followed by his wife, the children, their
23 relatives, all the way down in olden times to the slaves.

24 A related historical purpose, the economic public
25 order rationale: marriage created economic financial

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1 obligations between the spouses. It obligates the husband
2 and later the wife to support their dependence in each
3 other.

4 The State defendants offer rationale number four
5 to justify the Michigan Marriage Amendment but Professor
6 Cott will explain that marriage has never required the
7 ability or willingness to procreate. And here she'll tell
8 you about an important distinction: an inability to engage
9 in sexual intimacy can be a reason to annul marriage in
10 some states. But the ability to procreate has not been a
11 prerequisite to marriage in any state. People well beyond
12 child-bearing years can enter into marriages. People in
13 prison for life can marry.

14 She will describe the evolution of marriage in
15 this country. She will explain that there is no single
16 definition of marriage across history. There's no single
17 tradition of marriage across history.

18 In the area of gender, historically laws were
19 based upon a legal fiction that marriage was a legal unit.
20 The husband was the sole legal, economic and political
21 representative. A wife's identity was absorbed into or
22 covered by the husband, hence, the word "coverture."

23 The wife was kind of irrelevant. Legally, there
24 was no such thing as no-fault divorce. Men were legally
25 prohibited from abandoning wives because wives were

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1 dependent and subordinate to husbands.

2 Also in the area of race, there's been an
3 evolving tradition. Slavery. African Americans were seen as
4 the property of the slave owner. They could be bought and
5 sold and their marriage got in the way of that. So slaves
6 historically were not allowed to marry. African Americans,
7 therefore, were excluded from the definition of marriage in
8 this country.

9 Interracial marriage. In the past, laws
10 prohibited the blending of races based upon notions of
11 white supremacy. A black man could not marry a
12 Caucasian woman. Other laws prevented interracial marriages
13 between Chinese people, Indian people, and Caucasian
14 people.

15 Professor Cott will explain that marriage
16 evolved. Traditions changed. Discriminatory practices were
17 struck down at times by federal courts most often under the
18 Equal Protection Clause. Women became equal to their
19 husbands in the eyes of the law. Coverture laws were
20 repealed. Along came no-fault divorce. Women entered the
21 work force, became financially independent. Marriage is now
22 an equal gender neutral partnership with each party having
23 the same rights and obligations to each other and to
24 society.

25 The definition of marriage changed again once

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1 slavery was abolished. Loving versus Virginia did away with
2 the ban on interracial marriages.

3 We will be responding to the State's rationales
4 in this case for the two laws that we challenge. In past
5 briefing we've already shown you that based upon Supreme
6 Court precedent that tradition and morality cannot be used
7 as justifications for the disparate treatment of United
8 States citizens.

9 Laws can be based upon notions of morality, for
10 example, there can be no liquor sales before noon on a
11 Sunday, but they cannot under the Constitution have a
12 disparate impact on a disfavored minority.

13 As to rationale number -- that would be two,
14 throughout history in a series of Supreme Court cases the
15 state threatened that dire, quote, "unintended consequences
16 would result from the redefinition of marriage."

17 That didn't happen. The laws were struck down as
18 discriminatory. Loving versus Virginia the Supreme Court
19 struck down the interracial marriage ban not just based on
20 race but because marriage is a fundamental right. Loving
21 brought us more freedom to marry the person we love. It
22 brought us beautiful blended babies. The institution of
23 marriage did not suffer one bit.

24 We will be refuting the State's other arguments
25 in this case, that is, that only a heterosexual marriage

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1 will promote the transition of naturally procreative
2 relationships into stable unions, and that the marriage ban
3 promotes the ideal -- what the State calls the ideal
4 mother-father intact family.

5 First of all, we're going to show you in this
6 case that same-sex marriage in other states has had no
7 affect whatsoever on heterosexual marriage. Secondly, these
8 marriage bans are not having any affect on heterosexual
9 procreating decision-making.

10 Straight people are doing what they've always
11 done. They're getting married or not. They're having
12 children, or not. Their behavior is not affected by what
13 gay people are doing. There's no correlation, there's no
14 link here.

15 Even more importantly, not allowing marriage is
16 not preventing same-sex couples from having and raising
17 children. Evidence from the United States census -- we're
18 going to introduce through Gary Gates -- shows that same-
19 sex couples are having families with children in all states
20 whether or not they're allowed to be married in those
21 states.

22 The children are there. The families are there.
23 The laws aren't deterring the parents, they're hurting the
24 families. So these rationales don't make sense and they
25 don't pass rational basis.

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1 In response to our briefing on marriage law, in
2 response to the testimony of Professor Cott the State
3 offers the testimony of Sherif Girgis. Mr. Girgis hopes to
4 be a lawyer some day. He has never testified as an expert
5 before. He has no advanced degree in any field that matters
6 in this case, psychology, sociology, demography, history.
7 He is a philosopher. He's testifying apparently because he
8 has an opinion.

9 According to Mr. Girgis, the purpose of marriage
10 is procreation and procreation only. All that language from
11 the Supreme Court that I quoted earlier, a sacred intimate
12 bond, marriage as a means of emotional security, physical
13 well being, economic stability, none of that matters to Mr.
14 Girgis, only procreation.

15 From our pretrial briefing the Court is already
16 aware of our concerns about the admissibility of his
17 testimony. We also contend that little weight should be
18 afforded his testimony. We believe that Professor Cott is
19 the far more credible and qualified witness in this case.

20 The child outcome rationales: The bulk of the
21 trial testimony will address these rationales: Primarily
22 providing children with a biologically connected role
23 models of both genders that are necessary to foster
24 healthy, psychological development. And to a lesser extent
25 this will also touch on number two, forestalling the

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1 unintended consequences that would result from the
2 redefinition of marriage.

3 We will be introducing you or re-introducing you
4 to the families headed by same-sex couples in America.
5 They're demographics, who they are, where they are. We'll
6 look at the parents. We'll look at the children. And we'll
7 talk about the large percentage of children adopted from
8 the foster care system by lesbians and gay men because this
9 is a crucial fact in this case. Foster care prior to
10 adoption has a big affect on child outcomes. We'll bring
11 you some of the leading experts in the country in areas of
12 psychology, sociology, statistics, demography. Expert
13 testimony and adoption, same-sex parenting, child
14 development.

15 We're going to try to come at this from all
16 angles. This is an important discussion. This Court wanted
17 a trial to look at this rationale in particular I believe.
18 You told us you wanted and needed to assess the credibility
19 of these expert witnesses. We really hope that here in this
20 courtroom we can resolve once and for all the question of
21 whether or not gay and lesbian people can make good
22 parents. Not just for the sake of April and Jayne and the
23 children but for same-sex parents and their children across
24 Michigan, across the country. We want to be thorough. We
25 would like this to be the last trial in America where same-

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1 sex parents will have to defend themselves this way.

2 We'll look at things that affect child outcomes.

3 What makes a good parent? When do children thrive?

4 The answer to that question comes from 50 years
5 of social science research. That research crosses the
6 social science field. There is a broad consensus about the
7 factors that predict positive adjustment in children.
8 Family processes, family resources. The quality of the
9 relationship between the parents. The quality of the
10 parent-child attachment, the parent-child relationship,
11 parenting characteristics, warmth, empathy, sensitivity to
12 the child's needs, educational opportunities for the child,
13 resources and support available to the family, and the good
14 mental health of the parents.

15 These factors are all well-known within the
16 social science community. These families have been -- these
17 factors have been studied as to all family forum. Single
18 parent families, adopted families, divorced parent families
19 and the same-sex couple families. We know very well what
20 makes a good parent and what makes for good child outcomes.

21 The State defendants claim here that a child
22 needs a parent of both genders in order to thrive. This is
23 an odd argument because Michigan allows single parents to
24 adopt. Nevertheless, we're going to present expert
25 testimony in this case from psychologist, David Brodzinsky.

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1 He's a leading expert in the country in the areas of child
2 development, adoption and child outcomes, parenting by gay
3 and lesbian couples. He's a professor, a researcher, a
4 clinician and almost most importantly he has counseled
5 thousands of families including families headed by same-sex
6 couples and he's counseled their children as well. He's
7 also an author. He's written the leading book on parenting
8 by gay and lesbian couples. He's conducted studies through
9 his institute, the Donaldson Adoption Institute.

10 He's also testified in marriage and adoption
11 cases in other states. He'll explain that while it may be a
12 popular belief that children must have both a mother and a
13 father in order to function well children actually thrive
14 equally well when they have two moms, when they have two
15 dads.

16 Doctor Brodzinsky is going to explain that in
17 heterosexual families, for example, mothers and fathers do
18 sometimes adopt different parenting styles. But he'll
19 explain there's lots of variations in all families. He's
20 going to explain that parenting style is most often more a
21 function of whether the parent is the primary as oppose to
22 the secondary parent. A stay-at-home dad is going to look
23 different than an Ozzie Harriet dad in terms of gender role
24 modeling, and there's no one single correct gender modeling
25 style. Children do generally well no matter what style

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1 their parents adopt.

2 Doctor Brodzinsky is going to explain that moms
3 and dads are both important to children, but they're
4 important as parents. Two parents bring double the resource
5 to the family. He will explain that this all goes back to
6 the factors we talked about earlier, family process and
7 especially family resource. Two parents bring more
8 resources to the family.

9 The State defendants really take two positions on
10 whether or not the children of gay and lesbian parents have
11 worse outcomes than the children of heterosexual parents.
12 The first position and expounded by Dr. Loren Marks. His
13 position is that we just don't know enough yet. According
14 to Dr. Marks same-sex parenting is too new, the research is
15 too nascent. According to Dr. Marks -- he says the studies
16 aren't the right type of studies.

17 The second position is a little different. The
18 State defendants' experts Mark Regnerus, Douglas Allen and
19 Joseph Price is that academic and various other outcomes
20 for the children of same-sex parents are worse. They claim
21 that the research demonstrates that these outcomes are
22 worse.

23 What you're going to see in this case is that
24 neither of these positions are correct. The evidence in
25 this case is going to show that there are now 30 years of

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1 research, well over a hundred studies, nearly 150 studies,
2 and a broad base consensus across the social science
3 community that children raised by same-sex couples do every
4 bit as well as children raised by heterosexual parents.

5 These families have been researched from every
6 angle. We've researched the parents. There's an abundance
7 of research and studies regarding parents looking at their
8 parenting ability, their commitment to children, how they
9 parent. There's research, an abundance of research and
10 studies evaluating children, showing their adjustment,
11 their psychological well being, behavioral issues, peer
12 relationship, and their educational attainment. These
13 studies have found that gay and lesbian parents are equally
14 capable, equally committed to their children in comparison
15 with heterosexual counterparts. And the children of same-
16 sex parents fair no differently than their peers.

17 We're going to look a lot at methodology in this
18 case. The studies first used different methodologies to
19 recruit their subject. Many you're going to hear of these
20 100 -- 150 studies use convenient samples. This is very,
21 very typical of psychological research. You take a smaller
22 study group. You measure them and assess them more deeply.
23 Other studies have used representative samples. You take a
24 large data set like the U.S. Census. You look across the
25 population and then you pull out your sample subjects.

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1 These studies also use different methods of
2 assessment: observing the children, observing the parents,
3 talking to their teachers, standardized testing. The
4 studies are diverse in terms of the length of the study
5 period. There have been some longitudinal studies which are
6 studies obviously over time and there have been cross-
7 sectional studies.

8 For example, research will take seventh graders
9 all across the country at one fixed point in time and
10 measure a specific outcome. That's a cross-sectional study.

11 The evidence is going to show that the research
12 has been conducted primarily by psychologists. That's
13 because psychologists study child development. The State
14 defendants in this case are not going to be introducing an
15 expert psychologist in this case.

16 On the question of methodology the defendants'
17 expert, Loren Marks, will basically be criticizing the
18 standard bread and butter methodology of psychology. It's
19 an indictment of the field of psychology. His view is that
20 we can't know definitely about the outcomes of children, of
21 same-sex parents unless we have a large representative
22 randomly sample longitudinal study that will span,
23 according to him, some 20, 30, 40 years before we can
24 answer this question and move on. But there have already
25 been over 100 studies over the course of 30 years. And we

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1 have research at all ages. We have research on young
2 children. We have research on adolescents. We have research
3 on young adults.

4 Doctor Brodzinsky will explain that the
5 replication of results over time in different studies using
6 different methods assure us of reliability particularly
7 where the studies come to a near universal conclusion that
8 there's no difference between the outcomes for children of
9 same-sex parents and the outcomes for heterosexual parents.
10 That finding is sometimes referred to as the "No Difference
11 Conclusion."

12 Secondly, psychologists and social science
13 researchers know the predictors of good and bad outcomes
14 for all children. Psychologists have been studying known
15 predictors of children for 50 years. Children are children.
16 If they are going to have problems they don't just start to
17 have problems in their 20s and 30s. There are certain known
18 predictors earlier in childhood that will tell us whether
19 or not there's a tendency or a correlation to worse
20 outcomes later on.

21 The standard predictors of child behavior all
22 look good for the children of same-sex parents. Beyond that
23 there is a consensus across the social science community.
24 This "No Difference Conclusion" is supported by a
25 consensus. It's recognized by every major group in this

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1 country dedicated to children's health and well being. The
2 American Psychological Association, the American Academy of
3 Pediatrics, the American Psychiatric Association, the
4 American Medical Association, the American Academy of Child
5 and Adolescence Psychiatry, and the National Association of
6 Social Workers, and the Child Welfare League of America.
7 All of these professional organizations in various forms
8 using various languages have issued policy statements on
9 the subject of same-sex parents and the well being of their
10 children. And they all say essentially the same thing.

11 Here's the language from the American
12 Psychological Association. This was passed back in -- we've
13 known this since 2004, I believe, or 2005.

14 "There's no scientific basis for concluding that
15 lesbian mothers and gay fathers are unfit parents on the
16 basis of their sexual orientation. Overall, the results of
17 the research suggest that development, adjustment, and well
18 being of children with lesbian and gay parents do not
19 differ markedly than that of children raised by
20 heterosexual parents."

21 The State also contends that children need a
22 biological mother and father in order to thrive. This is
23 another odd argument because Michigan does not require a
24 biological tie between parent and child. Like every other
25 state Michigan has a very robust policy in favor of

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1 adoption.

2 In any event, this argument is going to lead us
3 in this trial to a little more detailed discussion that is
4 necessary in this case about the affects of adoption, the
5 affects of foster care placement prior to adoption, the
6 affects of artificial reproductive technologies on the
7 outcome of children.

8 Professor Brodzinsky is going to explain that
9 when you're talking about adoption whether it be by
10 heterosexuals or by same-sex couples most children do fine.
11 Adoption has been a tremendously successful social policy.
12 We're rescuing children from parents who abandon, abuse and
13 neglect them, helping children of deceased parents, and we
14 give them to competent caring parents who want them like
15 Jayne and April. It's been an enormous success, far
16 superior to what we were using in the past, the orphanages.
17 And there's been a huge cost savings to the State on top of
18 that.

19 But Dr. Brodzinsky will explain however that
20 there is a statistically significant percentage of these
21 children who will have some problems with adjustment, all
22 adoptive children. He says most do very well, but some have
23 problems and some of those problems will pass over time.
24 You might see children have problems in elementary school
25 that are gone by high school. Some of the problems persist.

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1 Doctor Brodzinsky is going to explain that we
2 know what causes poor outcomes on children, on average in
3 adoptive children. There's two categories.

4 Prenatal experience. Under this category you may
5 see the lack of prenatal care that comes with poverty, poor
6 nutrition for the birth mothers, drug exposure, substance
7 abuse. These are high stress pregnancies. We know that at
8 the end of the pregnancy the mother is giving up her child
9 so there's a lot of stress associated with the pregnancies
10 of these women turning their children over to adoption.

11 Postnatal experience. That's the time obviously
12 post birth but before they're placed with their adoptive
13 parents. They may have problems again with their birth
14 parents. There might be abuse and neglect. They might have
15 a failure to thrive. There might be nutrition problems.
16 Many have problems related to their stay depending on how
17 long it is they are in foster care. Many children have a
18 series of foster placement. With those children you will
19 have a higher percentage of problems having to do with
20 attachment, for example.

21 Our witnesses in this case are going to make a
22 very important point here. Same-sex couples are more likely
23 to adopt these harder children, special needs children than
24 straight couples. Same-sex couples are more likely to adopt
25 from the foster care system than straight couples. If you

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1 put all this together we know that the children most at
2 risk for these pre-adoption risk factors they are the
3 children that gay and lesbian people are more likely to
4 adopt.

5 On the flip side, if you take children adopted at
6 birth by all families, heterosexual families, same-sex
7 families, children raised from birth to age 18 by same-sex
8 parents, the intact family, the adjustments are very
9 similar to what the state is touting as the ideal
10 biological mother-father family. Adoptive parents are every
11 bit as good as biological parents.

12 There are studies that show they have some real
13 advantages over even birth parents. They tend to be more
14 educated, they have higher incomes. These are planned
15 families. The children are fairly all wanted.

16 So Dr. Brodzinsky is going to conclude that
17 biology is not the controlling factor here. To the extent
18 there is some difference in maladjustment in adoptive
19 children it is caused by other factors not by their
20 parenting, not by the orientation of the parents.

21 He's going to define some concepts for us that I
22 have -- many of us were not aware of. But maladjustment
23 obviously usually means adjustment that requires
24 therapeutic intervention. Doctor Brodzinsky is going to
25 distinguish that from a normative challenge and he's going

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1 to distinguish that from a difference that doesn't qualify
2 as maladjustment.

3 An example of a normative challenge in adoptive
4 children. They may have challenges relating to questions of
5 identity, who are my parents, who is my father, a sense of
6 loss why didn't my parents keep me. And bi-racial adoptions
7 as well where the parents are white and the children are
8 African American or vice-versa. You may have normative
9 challenges associated with that. None of these factors are
10 considered maladjustment in the field of psychology.
11 They're considered normative challenge. Good parents
12 address those issues. They help the children through it.
13 They don't lead to adjustment problems.

14 An example of a difference that's not
15 maladjustment. The children of same-sex couples and there's
16 been studies on this, are more tolerant of difference.
17 Differences in race, differences in ethnicity, culture.
18 You're not going to see the kids on the playground hurling
19 racial slurs at each other. They're less likely to be
20 bigoted people. These children also typically don't hold
21 rigid views of gender modeling that a wife has to do "X" or
22 a husband has to do "Y." This isn't maladjustment, it's
23 just difference, and it's differences that the researches
24 that you see in the children of same-sex parents.

25 In this case I think all of the experts are going

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1 to talk about others types of families that on average
2 don't do as well. The experts on both sides are going to
3 talk about step-families. The step-family experience is
4 correlated with worse outcomes for children.

5 Coming from divorce families. This is well-known
6 that some children of divorce families struggle more often.
7 We don't mean all children of divorce, but there is a
8 statistically significant percentage. These factors are
9 relevant here and they come into play when you're talking
10 about the studies, when you're talking about the research
11 and what it really shows because the experts are going to
12 be attacking the consensus that we talked about earlier.

13 For example, the State defendants offered the
14 testimony of Mark Regneris. He's a sociology professor
15 regarding his study from a large data set called the New
16 Family Structure Survey, the NFSS.

17 The most important thing you can say about Dr.
18 Regneris' study is that it didn't really evaluate the
19 adjustment outcomes for children raised by same-sex
20 parents. He didn't do an apples-to-apples comparison. In
21 one comparison group Mark Regneris puts what the State
22 considers the ideal family. Biological mother-father,
23 raising the child from birth to 18, the intact family.
24 That's the first category. There's no step families in
25 there. There's no children of single parent families in

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1 there, no divorce families in there.

2 In the other group we don't have same-sex couples
3 raising children from birth to 18. Instead we have a miss-
4 match category that includes basically any child who
5 reports that one of their parents at some time had a same-
6 sex relationship at some point during the respondent's
7 childhood. So they're not same-sex couples, this category
8 based upon this definition.

9 So he's comparing the ideal category with this
10 other category that includes children of divorced parents,
11 the children of step families. It's not an apples-to-apples
12 comparison. It's not a fair comparison. And it's not good
13 science.

14 Including children of divorce, children of step
15 families in the same-sex parents group skews the research.
16 Our experts are going to call this the failure to control
17 for family instability. There are many other studies --
18 many other problems with that study which we're going to
19 lay out through another one of our witnesses.

20 You're going to be hearing from Professor Michael
21 Rosenfeld, from Stanford University. He's our witness. He's
22 a sociologist -- experts from both sides will acknowledge
23 he's a highly regarded, highly respected social scientist
24 and scholar. Doctor Loren Marks who is there expert has
25 said that Michael Rosenfeld has produced one of the gold

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1 standard studies in the field.

2 Rosenfeld generated the study regarding academic
3 achievement based upon the United States Census. His study
4 is a large representative study which finds that children
5 of same-sex parents fair just as well. In addition,
6 Professor Rosenfeld takes the same NFSS data set that Mark
7 Regnerus is using and when he controls for family stability
8 he finds that the children in the other group, that is, the
9 children who reported that they had a parent who had
10 engaged in a same-sex relationship they didn't fair any
11 worse than the children of heterosexual couples.

12 In other words, when you take out a factor known
13 to cause worst outcome: instability. When you're left with
14 same-sex parents actually raising children together the
15 adjustment problems are no different for the two groups.

16 Mark Regnerus has acknowledged that when his NFSS
17 study came out it was widely condemned in the social
18 science community. He admits -- or he admitted during his
19 deposition that he was pretty stunned by the negative
20 outcry. You'll see that there is a consensus going in the
21 other direction away from Mark Regnerus. His professional
22 peers don't agree with him at all. In fact, the same
23 journals, social science research, which published his
24 study in the first place immediately turned around and
25 published an audit of his findings that was highly

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1 critical. We contend this is relevant to his credibility.
2 It's relevant to the weight that this Court if it admits it
3 should afford his testimony, and it's relevant under the
4 Daubert analysis that is ongoing because we're running the
5 two together.

6 Two other experts I'll talk about briefly. The
7 State will present Douglas Allen and Joseph Price, both
8 sociologists. I put them in the same group because they
9 both wrote an article together, but in addition Douglas
10 Allen did a study based upon data from the Canadian Census.

11 Allen claims that his study shows poorer
12 graduation rates by kids in same-sex couple families. But
13 here we don't even know if the children were raised in
14 same-sex couple families for the bulk of their lives.

15 Doctor Rosenfeld, our expert, will explain and
16 rebut his findings. He will tell you that this is another
17 case of not isolating for the factor that you're trying to
18 study. It's another case of not having the apples-to-apples
19 comparison.

20 When Rosenfeld used the same data as Douglas
21 Allen, when he controls for the factor of family
22 instability again the differences in outcome disappears for
23 the children of same-sex couples. For most of the subjects
24 in Allen's study you don't know where the children lived
25 for most of their school years. So he took them -- I think

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1 it was 2006, but for a 17 year old you don't know where the
2 child lived from birth to age 12. For a 22 year old, that's
3 the age span he measured, 17 to 22 year olds, you don't
4 know where that child lived from birth to 17. So basically
5 it's a whole childhood.

6 There's a third study that the State defendants
7 will be relying on. There's an Australian researcher named
8 Sarantakos. His study is being relied on by Loren Marks so
9 I will address that.

10 Sarantakos, like the other defendants' experts,
11 claims that he saw poor primary school performance and
12 other social outcomes among children of same-sex couples
13 compared to children of heterosexual couples. Again, we see
14 the same problems, not an apples-to-apples comparison. And
15 what you see in Sarantakos' study is that all of the
16 children in the study were the product of a prior
17 relationship, and most often that was a prior heterosexual
18 relationship that failed. Therefore, the parents had
19 experienced -- the children had experienced a breakup of
20 their parents or they experienced single parenthood, also a
21 risk factor, or both. And we know that these circumstances
22 are associated with poor outcomes.

23 Now, there's an analogy that works for me and I
24 hope it will help you as you listen to this kind of complex
25 testimony. And my apologies in advance, this is coming from

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1 a person who has attended way too many child sporting
2 events.

3 Let's say we're a track meet. We'll put eight
4 kids on the starting line of a 100-meter dash. Now, we'll
5 take one of those kids and we're going to start him 20
6 yards back from the starting line. We'll take that same
7 child and we'll have just him carry the juice boxes and the
8 oranges and maybe the First Aid kit, and then we'll let
9 them all race. And we're wondering why they don't all
10 finish at the same time. It's not that complicated. It's a
11 not a fair competition. These children, the foster kids,
12 the children raised by single parents, the children of
13 divorce, the step children, they're not playing on a level
14 playing field, and yet we're faulting them for not
15 thriving, and we're blaming their parents.

16 I think this underscores we're going to show in
17 this case a fundamental flaw in the State's ostrich
18 approach to the research.

19 Assessing based upon outcomes alone especially
20 under the Allen study, for example, where he just zones in
21 on high school graduation rates has real limitations. The
22 State witnesses are also preoccupied with what we would
23 consider a minuscule portion of this board based research.
24 All of the State studies suffer from huge flaws in
25 methodology which we're going to point out. And all of them

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1 conflict with the broad body of research. We have 100 to
2 150 studies spanning 30 years measuring everything to tell
3 us more. It tells us what we need to know here. It tells
4 you everything that you need to know to decide this case,
5 Judge. That's the research I think that will be most
6 helpful to you.

7 At this point I want to do a little detour out of
8 the child outcome research to the history of discrimination
9 before I turn back to some final points about same-sex
10 parents.

11 We have presented a stipulation which admits into
12 evidence the expert witness report of Professor George
13 Chauncey. He talks about the history of discrimination, the
14 history of disparate treatment of gay and lesbian people in
15 this country. He explains that gay and lesbian people have
16 been classified in this nation as degenerates. They have
17 been the victims of hate crimes. They were targeted by
18 police, harassed in the workplace, censored, demised,
19 barred from government jobs, fired from government jobs,
20 excluded from our armed forces. And up until 2003, they
21 could be arrested in this country for their private,
22 intimate sexual conduct up until Lawrence versus Texas was
23 decided by the Supreme Court.

24 Professor Chauncey will tell us that lesbian and
25 gay people live the legacy of discrimination even today.

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1 They have been repeatedly stripped of their fundamental
2 rights by popular vote. Forty states have enacted marriage
3 bans.

4 The State defendants defend these laws saying
5 they just reflect the traditional definition of marriage.
6 This is the way we've always done it, therefore, it's
7 justified. But Professor Chauncey explains in his report
8 that this, quote "tradition is nothing more than an
9 extension of the pattern of discrimination against same-sex
10 couples." He will explain that there has been some progress
11 and we have seen it mostly in states other than Michigan.
12 But even then with the progress there's been backlash.

13 Over the course of history, Dr. Chauncey
14 explains, "anti-gay laws often were passed or enacted in
15 response to periods of relative growth in the visibility or
16 tolerance of gay people."

17 He'll explain that in November of 2003, the
18 Supreme Court of Massachusetts was the first to uphold
19 marital rights for same-sex couples. In the very next
20 election cycle in Michigan came the backlash. November of
21 2004, was when the Michigan Marriage Amendment was passed.

22 Through Professor Chauncey, we will show that the
23 passage of the marriage ban here has to be viewed on the
24 context of a larger, pervasive, relentless history of
25 discrimination against gay and lesbian people in this

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1 country. Our marriage ban did not happen in a vacuum. This
2 Court said in its order "when there is a history of
3 disparate treatment against an unpopular minority a more
4 exacting forum of scrutiny is required." Well, if it looks
5 like a duck, and walks like a duck it's probably a duck.

6 We will be asking you to conclude at the end of
7 this case that the proponents of the marriage ban fully
8 intended to exclude this politically unpopular group from
9 the rights and benefits of marriage.

10 THE COURT: His testimony will be by his report,
11 he will not be testifying?

12 MS. STANYAR: That's correct, Judge.

13 THE COURT: Okay. And what exhibit is that, just
14 so -- if you know. We can get it later.

15 MS. STANYAR: It's 51, but we'll get you that.

16 The language of our ban is identical to the
17 federal DOMA statute struck down in Windsor. The intent was
18 the same. This is discrimination.

19 We're going to be asking you in this case to look
20 at how the history of discrimination interacts with the
21 research, how it interacts with the history of these
22 families generally and child outcomes more specifically.
23 How all of this comes together.

24 Thirty years ago, your Honor, very few people in
25 America were living openly out of the closet as gay or

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1 lesbian. In the 1907s, 1980s, most people including gay
2 people still believed that orientation, sexual orientation
3 was a choice. And very few people back then would choose to
4 be a, quote, "homosexual." In the face of that kind of
5 discrimination, that kind of stigma, that kind of abuse,
6 gay and lesbian people were not living openly with
7 partners, and far fewer were participating in planned same-
8 sex families 30 years ago.

9 Adoption by same-sex couples. There were some,
10 but they weren't happening much. Most states didn't allow
11 them. Artificial reproductive technologies for lesbians and
12 gay men really weren't happening back then either.

13 We'll hear testimony in this case there certainly
14 were gay and lesbian people. They were always there. Gary
15 Gates is going explain the demographics. A predictable
16 consistent percentage of the population both then and now.
17 But back then in the face of that kind of discrimination
18 most lesbians and some gay men were trying to live straight
19 lives. Like a lot other people they were inspiring. They
20 wanted the State's ideal family, too. They wanted the
21 picket fence, the children. They wanted an intact family.
22 Many lesbians and gay men were trying to function in
23 heterosexual marriages. Predictably it didn't work. You
24 can't choose your orientation. Now we know that, didn't
25 then.

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1 We'll be showing you how this unique history
2 relates to the child outcome research. Those marriages
3 failed. They were doomed to fail. The children of those
4 marriages would struggle the way of the children of divorce
5 may struggle as well. That means that the children of gay
6 men and lesbians born initially into mother-father families
7 during that particular time period, '70s, '80s some of the
8 '90s will be associated with the predictably higher
9 percentage of adjustment problems. Those men and women
10 eventually did come out of the closet, most of them. They
11 are the men and women in these studies that you're going to
12 hearing about.

13 But we'll show you how -- we have to look at that
14 and how it impacts the child outcome research. We'll show
15 in this case unless we're careful that history that I just
16 talked about will skew the research. With the passage of
17 time and this is the good news fewer and fewer lesbian and
18 gay men were trying those starter marriages and far fewer
19 today.

20 But the discrimination was still there. It is
21 still here, but with each passing year there was a growing
22 awareness by these men and women that sexual orientation is
23 not a choice.

24 We're going to ask the Court to peel back the
25 layers, the layers of history, the layers of

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1 discrimination, the layers of the research. And at the end,
2 we'll ask you to find that the best way to know how
3 children will fair, if they are raised by same-sex couples,
4 is to look at the children actually raised by same-sex
5 couples. Look at their parenting. Look at the children and
6 judge them fairly.

7 One last point on the child outcome rationale,
8 we've mentioned before, I'd like to mention it again
9 because it is important. No other group in society has to
10 pass a parenting competency test before they're allowed to
11 marry, before they're allowed legal status as second
12 adoptive parents.

13 You'll hear testimony that there are groups of
14 parents in society that we know have children with poor
15 outcomes on average. Parents who have low incomes. Parents
16 with lower educational levels. Parents who marry, have
17 children, get divorced and want to marry again. There's no
18 competency tests for these parents. But we don't bar them
19 from marriage. We don't bar them adopting as second
20 parents. So that's an additional reason that these laws are
21 affirmatively irrational.

22 Briefly on injury under 1983, through a
23 combination of briefing and testimony we will demonstrate
24 to the Court the injuries cognizable under Section 1983.
25 Over the past two years we have briefed for this Court the

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1 loss of important economic resources, the loss of health
2 insurance, social security and disability benefits, the
3 loss of survivors' benefits, inheritance rights, many
4 others associated with the marriage ban. So part of the
5 injury here is clearly economic and we know that already.

6 We know from the family resource factors that we
7 talked about at the beginning at adequate resources, family
8 resources are necessary for children to thrive. A lack of
9 resources hurts children.

10 Doctor Brodzinsky will also talk about the
11 psychological injury to children caused by both of these
12 laws. Marriage ban, the same-sex -- the second parent
13 adoption ban. He will explain that no matter how competent,
14 how loving, how devoted, how caring that second parent is
15 from the child's perspective some children will suffer from
16 what he calls an ambiguous socially unrecognized seemingly
17 non-permanent relationship with that second parent. He'll
18 tell us that such an arrangement can deprive the child of
19 emotional security, societal affirmations, a sense of
20 normality, identity, and social stability that becomes a
21 full legal relationship with that second parent. They can
22 suffer unnecessary fear, anxiety, insecurity relating to
23 possible separation from the second parent in the event of
24 the parent separation or the death of the biological or
25 adoptive parent.

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1 We offer this evidence because, first of all,
2 it's clearly relevant to injury, and we're entitled to show
3 this. We offer it also because it interconnects with the
4 State's child outcome rationale.

5 All the experts will tell you that families
6 benefit by the stability that marriage brings. Children
7 thrive when there's stability.

8 Another generation of Michigan's children should
9 not have to await the perfect longitudinal study before
10 they have rights, before they can enjoy stability, before
11 they can really count on that second parent.

12 These two laws in tandem perpetuate
13 discrimination. The marriage ban singles out gay and
14 lesbian people alone for the exclusion from the institution
15 of marriage even though they are and have always been fully
16 contributing members of our society. It is hard to imagine
17 how the adult plaintiffs in this case could be contributing
18 any more than they are. April Deboer in a nicu nurse. She
19 cares for sick and dying infants every day. Jayne Rowse is
20 an emergency room nurse. She's taking care of all of us.

21 Together they took in the babies that were left
22 behind, special needs children, an incu baby on a
23 respirator struggling to live. Harder to place children.
24 Children of color. They nurse them back to health. They
25 loved all of them. They gave the children what they needed.

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1 And I'm happy to report all these children are thriving
2 now.

3 Yes, this case is about marriage equality. It's
4 also about the health and well being of children. It's
5 about bringing stability. Bringing dignity to children.

6 These two women have been taking care of
7 Michigan's children day in and day out for years. These two
8 women are heros.

9 Thousands of others of same-sex couples in this
10 state are heros, too, raising children, rescuing children,
11 adopting them from the foster care system. These parents,
12 all these children, all these families should be embraced.
13 They should be supported and they should be celebrated.

14 At the end of this case, we'll ask you to strike
15 down both of these laws and to reaffirm once and for all
16 that there are no second-class citizens in this country.

17 THE COURT: Thank you, very much.

18 State defendants, you may proceed.

19 MS. HEYSE: Thank you.

20 OPENING STATEMENT

21 MS. HEYSE: Good morning, your Honor.

22 Assistant Attorney General Kristin Heyse, on
23 behalf of State defendants.

24 Nice to see you again.

25 THE COURT: Nice to see you always.

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1 MS. HEYSE: A pleasure to be before you today.

2 THE COURT: Thank you.

3 MS. HEYSE: I just want to take a brief moment
4 before I get started, your Honor, to thank you and your
5 staff for the courtesies that you have extended to the
6 parties in this case. You've all certainly gone out of your
7 way to make this easier on us and we do appreciate that.

8 THE COURT: Thank you.

9 MS. HEYSE: I also want to take just a brief
10 moment to thank opposing counsel for their cooperation and
11 collegiality throughout these proceedings.

12 As you can imagine preparing for a trial in a 120
13 days is no easy feat, but we've all made it through. We're
14 adversaries. We're not enemies. I think that says a lot
15 about counsel on both sides of the aisle.

16 THE COURT: I agree with you. The civility between
17 the attorneys is textbook as it should operate all the
18 time.

19 MS. HEYSE: Thank you, your Honor.

20 But turning now, your Honor, to the reason we're
21 all here today is to determine the constitutionality of
22 Michigan's Marriage Amendment. I'm going to address five
23 points with you this morning, your Honor, and I'd like to
24 just outline them for you quickly.

25 First, I'm going to discuss the standard of

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1 review for this case.

2 Second, I'm going to discuss the implications
3 this case has for the democratic process.

4 Third, I'm going to discuss the valid reasons
5 that voters might have had for supporting the amendment,
6 such as, encouraging the ideal environment for raising
7 children, where kids are raised by both a mom and a dad.

8 Fourth, I'm going to tell you what the
9 plaintiffs' experts in their studies will say.

10 Fifth, I'm going to tell you what our experts
11 will say.

12 Again, at the outset, your Honor, I think it's
13 important to point out that plaintiffs have the burden
14 here. It is their job to negate every conceivable reason
15 for the Marriage Amendment. Therefore, questions like why
16 not allow same-sex marriage and what will it hurt are not
17 appropriate because those are not the issues before this
18 Court.

19 The people do not have the legal burden in this
20 case. Rather, it's plaintiffs who must show that the
21 people's decision to retain the definition of marriage as
22 between a man and a woman is irrational.

23 I think it's important, your Honor, to clarify
24 what this case is about because it's very easy to get
25 caught up in the emotion and sentiment that surrounds it.

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1 This case is about one thing, your Honor, the
2 will of the people. The people of the State of Michigan
3 have decided to retain the definition of marriage that
4 encourages what's best of children being raised by both a
5 mom and a dad. They have both the authority to address
6 policy questions like this, and they have rational reasons
7 for doing so. Thus, that decision must govern.

8 After Windsor there can be no doubt that defining
9 marriage is within the exclusive province of the state. And
10 the people of the State of Michigan have defined marriage
11 as between one man and one woman. This was not the whim of
12 a few but rather the choice of a majority.

13 Indeed, nearly 2.7 million voters chose to
14 reaffirm Michigan's definition of marriage. This was not a
15 vote against same-sex couples. It was not based on animus
16 or bigotry. But this was rather a vote to maintain a
17 definition of marriage that's been in existence since the
18 inception of this state. A vote to recognize and celebrate
19 the fact that both moms and dads are important.

20 Now, plaintiffs here ask this Court to wholly
21 redefine marriage for the State of Michigan, and the change
22 they are seeking is not at all similar to the Loving case
23 that Ms. Stanyar mentioned. In Loving, race was improperly
24 injected in Virginia's definition of marriage as between a
25 man and a woman. Here, Michigan's definition of marriage

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1 has never changed and has always been understood as being
2 between one man and a woman.

3 While plaintiffs will claim that Michigan voters
4 were somehow ignorant or irrational when they passed the
5 Marriage Amendment that's simply not the case. This Court
6 has already recognized that the people of Michigan have
7 articulated justifications for adopting the Marriage
8 Amendment. And while plaintiffs do have the burden here the
9 fact of the matter is the evidence will show that these
10 justifications are rational for three basic reasons.

11 First, it was rational for the people of the
12 State of Michigan to want to encourage the raising of
13 children by a mom and a dad recognizing that gender
14 diversity in parenting is what's best for kids.

15 This is a modest point, your Honor, not an
16 unreasonable or irrational one. There was a broad body of
17 research that supports that being raised by both a mom and
18 a dad is ideal. The fact of the matter is men and women are
19 different. They're not interchangeable. In fact, the United
20 States Supreme Court has acknowledged this in Taylor versus
21 Louisiana and I quote,

22 "The truth is that the two sexes are not
23 fungible; a community made up exclusively of one is
24 different from a community composed of both; The subtle
25 interplay of influence one on the other is among the

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1 imponderables."

2 To insulate the courtroom from either may not
3 either in a given case make an iota of difference, yet a
4 flavor. A distinct quality is lost if either sex is
5 excluded. Likewise, a distinct quality is lost in a family
6 if either of the sexes is not present.

7 Michigan's definition of marriage guarantees that
8 each of the sexes is represented in the family and in the
9 raising of children.

10 Now, we recognize that not all children can be
11 raised by a mom and dad, but that does not make the
12 people's desire to promote the ideal environment or in
13 other words, your Honor, the best case scenario any less
14 rational.

15 Second, it was rational for the people of the
16 State of Michigan to want to encourage marriage between a
17 man and a woman for the simple biological fact that that's
18 the only union that can actually produce children.

19 Third, it was rational for the people of the
20 State of Michigan to want to proceed with caution when
21 considering a change in this fundamental institution of
22 marriage. An institution that's been existence since time
23 and armorial and has served our society well.

24 This is especially true when we're dealing with
25 such a new and emerging area of social science. Same-sex

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1 marriage has only been in existence in the United States
2 since 2004. A decade, your Honor, is not enough time to
3 determine with any certainty the affects that same-sex
4 marriage will have.

5 Therefore, it was not irrational for the people
6 of the State of Michigan to want to take their time with
7 this unsettled area of social science.

8 Now, as Ms. Stanyar noted you're going to hear a
9 lot of expert testimony in this case. In fact, for this
10 whole first week you're going to hear from plaintiffs'
11 experts. And they're going to try to convince you that the
12 people's decision to retain the definition of marriage was
13 irrational because there is no ideal setting for raising
14 children, and because there are no differences in outcomes
15 for the children being raised by same-sex couples. They're
16 going to tell you that there are reasons -- no other reason
17 beside animus for the marriage amendment.

18 But wait to hear from our experts, your Honor,
19 because they're going to explain to you why plaintiffs'
20 experts are wrong and why the people's decision to retain
21 the definition of marriage was not only rational but it was
22 prudent.

23 Our experts are going to tell you that there are
24 reasons for defining marriage as between one man and one
25 woman that have nothing to do with animus. Our experts are

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1 going to explain to you why the "No Difference Consensus"
2 that plaintiffs rely on is flawed. They will tell you that
3 the studies relied on to come to this so-called "No
4 Difference Consensus" suffer from three major deficiencies.

5 First, they're not representative of the same-sex
6 parenting community as a whole. These studies can tell you
7 a lot about the people that are being sampled and studied
8 but very little, if anything, about the general population.
9 They are what we call small convenient sample studies.

10 One study in fact, your Honor, has a sample group
11 as small as five individuals with 30 being the average
12 number of individuals being studied.

13 I just want to repeat that fact for you, your
14 Honor, because it's a very telling point about the strength
15 of the social science that plaintiffs rely on. The average
16 number of participants in these studies is just 30
17 individuals. That's not enough to be statistically sound.

18 In addition, participation in these studies is
19 not random. Participants often are either recruited or
20 they're self-selected volunteers. This results most often
21 in only the most affluent lesbian couples being studied.
22 That's a problem, your Honor, because the same-sex
23 community is diverse, and there is no diversity within
24 these study groups. This is not acceptable for generalized
25 research. Our experts will tell you that such results

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1 cannot be generalized to a community let alone to the
2 nation as a whole.

3 Second, these studies call what we call soft
4 variables which are unreliable because they're subjective
5 in nature and they generally cannot be verified by an
6 independent third party.

7 And, third, these studies use improper comparison
8 groups. In other words -- for example, in the 59 published
9 studies that are relied on by the American Psychological
10 Association or the APA almost half of them did not even
11 include an opposite sex comparison group. So they weren't
12 comparing same-sex couples to opposite sex couples in those
13 studies.

14 Our experts will tell you that these small
15 convenient sample studies are preliminary in nature. So
16 they're a good start, but they are in no way conclusive of
17 the outcomes for children raised by same-sex couples across
18 the nation.

19 Our experts will tell you that they have
20 conducted large random representative studies which do show
21 a difference in outcomes for the children being raised by
22 same-sex couples and directly refute the APA studies.

23 These large studies have sample sizes in the
24 hundreds so they are representative of same-sex couples as
25 a whole.

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1 These studies use hard variables such as progress
2 in school which is reliable and verifiable. And these
3 studies use heterosexual couple comparison groups.
4 Our expert studies are objective, methodologically sound
5 and nationally representative.

6 But more importantly, your Honor, our experts are
7 going to tell you that the research in this area is
8 unsettled. It's just too new to know with any certainty
9 whether the children of same-sex couples fair just as well
10 as other families.

11 Likewise, it's too early to know the affects
12 that redefining marriage will have on the institution
13 itself. Everyone agrees this is a new area. And everyone
14 agrees that same-sex couples are a difficult group to study
15 because they constitute such a small population of our -- a
16 small portion of our overall population.

17 Our experts will tell you that what is needed to
18 make a definitive conclusion about whether there are, in
19 fact, no difference in the outcomes for children raised by
20 same-sex couples is a large nationally representative,
21 long-term study. Children being studied from birth to
22 adulthood. And right now, your Honor, no such study exists.

23 But in addition to waiting to hear what our
24 experts are going to say I also ask that you pay close
25 attention over the next few days to what plaintiffs'

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1 experts will not say. They will not say that the people of
2 the State of Michigan do not have the authority to define
3 marriage because they clearly do. And they will not say
4 that marriage has ever been defined any other way here in
5 the State of Michigan because it hasn't.

6 Plaintiffs' experts will not tell you that moms
7 and dads aren't important because they are. And they won't
8 tell you that moms and dads raising their children together
9 is a bad thing because clearly your Honor it's not. They
10 won't tell you there's absolutely no benefit to a
11 biological connection between a mom, a dad and a child
12 because there is. And they will not say that there's a
13 large scale, long-term nationally representative study on
14 the outcomes for children raised by same-sex couples
15 because there's not.

16 Now once you've heard from all the experts and
17 gone through the mountain of information that you're
18 inevitably going to be provided, you'll see, your Honor,
19 that the plaintiffs cannot meet their burden in this case
20 because again if there is any conceivable rational basis
21 for the people of the State of Michigan's decision to
22 retain the definition of marriage as between a man and a
23 woman then that decision must govern. In other words,
24 plaintiffs must show that all possible reasons for the
25 people's decision are irrational and that's a very high

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1 bar, your Honor, and one the plaintiffs' in this case can't
2 meet.

3 Now, your Honor, I'm sure you're thinking,
4 counsel, what about the recent decisions in Utah and
5 Virginia and Oklahoma, why shouldn't this case turn out any
6 different? My response to you, your Honor, is unfortunately
7 those courts lost sight of the proper standard. They forgot
8 who should define marriage.

9 As I'm sure you're very aware in the last two
10 years five district courts have examined the reasonableness
11 of a state law defining marriage as between a man and a
12 woman. Two of those decisions actually upheld the laws,
13 while three others all decided after Windsor have found
14 them irrational. Again, Windsor recognized that the
15 definition of marriage is the foundation of the State's
16 broader authority to regulate the subject of domestic
17 relations. These three later decisions finding that state
18 laws were irrational failed to give effect to the Supreme
19 Court's emphasis in Windsor that marriage is for the people
20 of the state to determine.

21 But even more notable is that none of these three
22 decisions challenged the premise that it's beneficial for a
23 child to have both a mom and a dad. Instead, in those cases
24 the courts claim that point would not justify excluding
25 same-sex couples. That improperly inverts the standard of

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1 analysis, your Honor. Here, the amendment that the people
2 of Michigan passed need only be relationally related to its
3 end and it is. It enables every child to have a mom and a
4 dad which benefits every child. To overturn the will of the
5 people, the Court must conclude that being born and raised
6 by a biological mother and father is inconsequential.

7 Michigan agrees there can be many kinds of
8 effective parents and parenting structures, but social
9 science has not yet proven that there is zero value in the
10 diversity of a child being raised by both a mom and a dad.
11 This Court should not race to embrace a position that
12 mothers and fathers are interchangeable or even
13 dispensable.

14 Finally, your Honor, I'd like to return to the
15 fact that the Marriage Amendment was a product of the
16 political process, a process that's at the very core of our
17 constitution. Again, this was not a whim of a few, but a
18 vote of a majority, the will of the people.

19 The Supreme Court has counseled against judicial
20 intervention of the political process especially when we're
21 dealing with such novel social issues recognizing that
22 courts should allow states themselves to be the
23 laboratories for social change. The fact of the matter is,
24 your Honor, no society anywhere has had even a single
25 generation's worth of experience with same-sex marriage.

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1 And there is a rich and robust debate going on throughout
2 the nation including Michigan. This Court should not end
3 that debate by deciding the social issue that is both -- as
4 both unique as it is new. Indeed, decisions reached through
5 the democratic process are more likely to be regarded as
6 legitimate and be widely accepted.

7 Same-sex marriage will likely be on the ballot in
8 2016. The people of the State of Michigan should be allowed
9 to decide if it is the time to redefine marriage.

10 Thank you, your Honor.

11 THE COURT: Thank you, very much.

12 Mr. Pitt, would you like some time, please, to
13 argue on behalf of your client, Lisa Brown?

14 OPENING STATEMENT

15 MR. PITTS: Good morning, your Honor.

16 Michael Pitt, on behalf of defendant Lisa Brown,
17 Oakland County Clerk.

18 Defendant Brown stands before the Court as a
19 defendant in this case but her role here is greater than
20 that of just a defendant. She's here as the voice of all
21 the county clerks of the State of Michigan, all the county
22 clerks who have taken the same oath of office to uphold the
23 Michigan and federal constitutions. All the county clerks
24 are eager for the Court's decision on this important issue
25 and to get a final resolution of the important legal issue

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1 that this case presents.

2 The clerk of every county in this state has taken
3 the same oath. This oath of office does not permit any of
4 the county clerks to discriminate against any couple
5 wishing to marry because of their race, because of their
6 religion, national origin, political viewpoint, disability
7 status, or any other intimate personal relationship which
8 is otherwise constitutionally protected. Of course, what we
9 have here today is this otherwise constitutionally
10 protected issue are same-sex couples entitled to the
11 protection of the law, do they have a intimate personal
12 relationship that the Constitution of the United States
13 would recognize as protected.

14 Make no mistake that when the county clerk issues
15 a marriage license a very important legal right between
16 those two people is created, and the only way that legal
17 right can be disturbed is through the death of one of the
18 partners or by divorce. Otherwise, that legal right is
19 invaluable, that legal right is a bedrock of our society
20 and those two people can go through life knowing that they
21 are secure and that they have a legal right that nobody can
22 ever take away from them unless they voluntarily relinquish
23 it or because of death.

24 In carrying out the duties of her oath of office,
25 the clerk is not required to listen to the Governor of the

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1 State of Michigan. She's not required to listen to Mr.
2 Schuette, the Attorney General of the State of Michigan.
3 She is not required to listen to the Governor's view of
4 what he thinks a traditional marriage is, and she's not
5 required to listen to the view of the Attorney General
6 as to what he may think constitutes a traditional marriage
7 relationship and whether or not a traditional marriage
8 relationship between a man and a woman is good or bad for
9 children. In carrying out her duties of her oath of office
10 she's not required to listen to the opinions of the AG, and
11 also she's not entitled to or required to listen to the
12 opinions of the voters in 2004 who voted to ban same-sex
13 marriage and to redefine what marriage is in the State of
14 Michigan. Those are views that are expressed by a majority
15 of people in the State of Michigan, but those views as
16 expressed in 2004 do not create a constitutional right that
17 she has to follow. What she is required to do is to follow
18 what the courts have said is the constitutional protection
19 that a particular type of intimate personal relationship is
20 entitled to regardless of what the majority of the people
21 of the State of Michigan may think. If the people of the
22 State of Michigan had voted in 2004 to ban interracial
23 marriages I don't think we would be here today. I think
24 there would have been a finding that that vote even though
25 by the majority of the people was an unconstitutional act

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1 and that those types of relationships could not be subject
2 to the whims of the majority vote.

3 The same applies here, and at the end of the day
4 that analysis that would be used for interracial marriages
5 is going to be applied I believe to same-sex marriage
6 equality issues.

7 More importantly, she will not even listen to her
8 own judgments about what is good or bad when it comes to a
9 traditional marriage. As clerk that's not her role. She may
10 see and she has told me that she has seen couples come
11 through the County Clerk's Office where the relationship
12 probably would be better not being formed. It's not her job
13 to form those judgments. Although she may think that it's a
14 bad idea for a woman to marry a man who has been convicted
15 ten times of aggravated spousal abuse she -- that woman is
16 entitled to a license. She's entitled to enter what people
17 in this courtroom have referred to as a traditional
18 marriage relationship even though marrying that particular
19 individual may end up costing her life or causing her
20 injury. Clerk Brown cannot prevent that woman from entering
21 into that relationship even though she thinks it's a bad
22 idea. It's not her job. Her job is to issue a marriage
23 license based on legal status and she's here today to
24 participate in the process so that there is a clear
25 understanding of what the legal status is when same-sex

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1 couples come to her counter asking for a marriage license.

2 She's going to testify also about implementation
3 and remedy. If the Court were to determine that the ban on
4 same-sex marriage in Michigan is unconstitutional then
5 there's going to be a time in this process where
6 implementation is going to be required. And she has
7 testified in deposition and she will testify here in court
8 that she has taken extraordinary steps already in
9 developing a protocol that will facilitate immediate,
10 immediate implementation of the Court's order so she has
11 worked with the State Registrar. Under the Michigan statute
12 the State Registrar is required to approve all of the
13 marriage license applications and the marriage license
14 forms. She and other clerks around the state have been
15 working with the State Registrar to devise gender neutral
16 forms that could be used to facilitate immediate
17 implementation of any court order may arise. She's prepared
18 to move forward swiftly and is looking forward to the time
19 when that may occur in the very near future. She is going
20 to follow the Court's order. She has indicated that she is
21 not going to obey any other public official other than this
22 Court and this Court's orders. If the Governor says she
23 shall not issue licenses after this Court has made its
24 ruling, she's going to obey this Court. If the AG says she
25 shall not issue licenses, she's going to obey the judicial

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1 determination. She's going to follow the law as the
2 judicial department issues its instructions and its orders,
3 and not other public officials no matter what they may
4 think about the particular issue. She's prepared to do
5 that. I believe there are many other clerks in the State of
6 Michigan who have expressed a similar view that they're
7 going to be ready to move forward with the issuance of
8 licenses to same-sex couples just as soon as the courts
9 resolve this issue.

10 I thank you for your attention, your Honor.

11 THE COURT: Thank you.

12 I appreciate it, Mr. Pitt.

13 THE COURT: Okay. Plaintiffs call your first
14 witness.

15 MS. STANYAR: Your Honor, the plaintiffs call Dr.
16 David Brodzinsky.

17 THE COURT: Very well.

18 Please step forward. Please raise your right
19 hand.

20 Do you solemnly swear or affirm to tell the truth
21 in the matter now pending before this Court?

22 THE WITNESS: I do.

23 THE COURT: Thank you. Please have a seat.

24 Please state your full name and spell your last
25 name for the record.

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1 THE WITNESS: My name is David Brodzinsky. Last
2 name is B-r-o-d-z-i-n-s-k-y.

3 THE COURT: Thank you.

4 D A V I D M. B R O D Z I N S K Y , P h. D. ,
5 (being duly sworn, testified as follows:)

6 DIRECT EXAMINATION

7 BY MS. STANYAR:

8 Q Good morning, Dr. Brodzinksy.

9 A Good morning.

10 Q What is your occupation?

11 A I'm a developmental clinical and forensic
12 psychologist.

13 Q Within the field of psychology do you have speciality
14 areas?

15 A I have several speciality areas, the primary one is
16 adoption and foster care.

17 Q How about other areas of speciality?

18 A Child development, non traditional family life,
19 parenting by same-sex couples and individual, gay and
20 lesbian individuals.

21 Q Let's focus on your teaching experience, have you had
22 any academic affiliations and for how long?

23 A Yes, I was professor of psychology at Rutgers from
24 1974 to 2006 when I took early retirement. I've had adjunct
25 professor affiliations at the Rutgers Medical School and at

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1 the Graduate School of Applied and Professional Psychology
2 at Rutgers as well.

3 Q Focusing first on your teaching experience in a
4 university have you taught in the area of child
5 development?

6 A Yes.

7 Q Have you taught in the area of clinical psychology?

8 A Yes.

9 Q Have you taught in the area of adoption?

10 A Yes.

11 Q Have you taught on the topic of same-sex -- have you
12 included the topic of same-sex parenting in any courses
13 that you've taught?

14 A Yes.

15 Q Did you teach at Rutgers University in the Department
16 of Psychology?

17 A I did, yes.

18 Q I think you've already told us over what period of
19 time?

20 A '74 to 2006.

21 Q Did you run any clinical programs there?

22 A From 1989, to 2006, I ran what was the Rutgers Foster
23 Care Counseling Project. It was a state-funded counseling
24 and training program servicing the foster families and
25 foster children in two- or three-county area around New

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1 Brunswick, New Jersey.

2 Q How many children were seen by the project?

3 A Roughly around 700 during the years that I was there.

4 Q Do you conduct research in the field of psychology?

5 A I do, yes.

6 Q Over what period of time?

7 A Well, I started as an undergraduate and certainly as I
8 entered graduate school, but most of my research was once I
9 became an academic at Rutgers from '74, and -- through
10 2006, and I continue to do research through the Donaldson
11 Adoption Institute.

12 Q We'll talk about that in a moment.

13 What are your primary areas of research?

14 A My primary area of research is in adoption or foster
15 care. I focus on many different areas of adoption.

16 Q Have you done any research related to adoption by gay
17 and lesbian parents?

18 A I have, yes.

19 Q Can you describe that?

20 A Well, we have two national surveys of adoption agency
21 policies and practices related to working with gay and
22 lesbian individuals. I've done a large scale of study of
23 gay and lesbian adopters or adoptive families looking at
24 their needs, their experiences, the type of adoptions they
25 engage in, the extent of openness of those adoptions and a

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1 variety of other factors. That wasn't a comparative study.
2 We've just collected data on about 1600 families, adoptive
3 families around the country which include about 250 to 260
4 of gay and lesbian families, and will be doing an analysis
5 of that. But that study is not just on differences or
6 similarities between gay and lesbian families. It's called
7 the Adoption Diversity Study. It's looking at all different
8 kinds of adoptive families.

9 Q Okay. Have you ever authored any publications?

10 A Yes.

11 Q Can you give us an estimate of the total number of
12 publications that you've authored?

13 A Roughly 100, yes.

14 Q Were the publications peer reviewed?

15 A About 50 percent of them were. Those are the journal
16 articles. They're in peer journals. The rest are book
17 chapters or books, including textbooks and six books and
18 adoption.

19 Q Are books typically peer reviewed or is there some
20 other review process with respect to books?

21 A It is a peer review process. It's different than
22 journals. It's not a blind review. When I'm asked to review
23 books, you know, I know who the authors are and I review it
24 for its integrity, its validity and so forth. The same
25 happens when I submit a prospectus to a publication house.

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1 They'll send out that prospectus for review by, you know,
2 other people in the field and then later on once the book
3 is complete they'll have other people look at it more
4 completely. Same with book chapters, too.

5 Q Okay. Can you tell us of some of your more important
6 works in this area?

7 A Well, probably the first book on adoption, "Psychology
8 of Adoption" was the first edited book in the field
9 focusing on mental health issues in adoption.

10 My second book "Being Adopted" is one of the best
11 selling books in the adoption field. That focused on the --
12 kind of the internal experience of adoptive individuals
13 from -- you know, young childhood through the adult years.

14 And then the most recent book is an edited book
15 on "Adoption by Gay and Lesbians" and that's been very
16 received in the field.

17 Q That's been published and is in circulation?

18 A Yes, it's published by Oxford University Press.

19 Q All right. If you look at Exhibit 1. Is that a copy of
20 your curriculum vitae?

21 A Yes, it is.

22 Q Does that document also list your educational degrees,
23 your employment and your publications?

24 A It does.

25 MS. STANYAR: I move it's admission.

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1 MR. POTCHEN: No objection, your Honor.

2 THE COURT: It will be received, Exhibit 100.

3 MS. STANYAR: Exhibit 100.

4 (Plaintiffs' Exhibit No. 100 received into
5 evidence)

6 BY MS. STANYAR:

7 Q Do you serve on the editorial board of any academic
8 journals?

9 A I currently serve on the board of Adoption Quarterly
10 which is one of the better known journals in the child
11 welfare field. I was on the editorial board of the "Journal
12 of Applied Developmental Psychology" and "Youth in
13 Society." I've been a reviewer, a regular reviewer for all
14 the top tier developmental and child clinical journals
15 throughout my academic career and to the present, too.

16 Q So you were just talking about when you peered
17 reviewed others.

18 A Exactly, yes.

19 Q Okay. Over the course of your career how many would
20 you guesstimate that you've reviewed?

21 A It's hard to say. I regularly review probably two or
22 maybe three a month. So if we multiple that by 12 and then
23 multiple that by 40 years since 1974, it's a large number.

24 Q All right. Do you have a private clinical practice as
25 well?

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1 A I do.

2 Q Tell us about your private clinical practice as a
3 psychologist.

4 A I'm in partnership with my wife who is also a
5 psychologist. The trade name is Family Mental Health
6 Consultants. I've been practicing since 1985, first in New
7 Jersey where I lived until 2006, and currently in
8 California where I currently live and practice.

9 Since I've been an academic it's never been a
10 full time, you know, five days a week, eight hours a day
11 kind of practice. It's usually anywhere between 10 and 20
12 clients a week. At this point it's probably between 10 and
13 12 clients a week.

14 (End of Part A)

15 -- -- --

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1 Q. And has that been steady over the course of that time
2 period?

3 A. It picked up in the late '80s. As I started doing research
4 in the area of adoption, I started getting a lot of referrals
5 from adoptive families that I work with to help them around
6 some of the normative issues, that I assume we'll talk about
7 later on around adoption.

8 Q. All right. During the entire, the entire span of your
9 clinical practice, how many families do you think you've
10 counseled?

11 A. I'm going to guess somewhere around 2,000.

12 Q. How many children?

13 A. Well, that's hard to estimate. Sometimes those families, I
14 only worked with the parents doing parent coaching. Sometimes
15 I work with multiple children in a family, and family
16 therapists. So even if we average one child per family, it
17 would be roughly 2,000.

18 Q. Do you counsel any families headed by same-sex parents?

19 A. I have, yes.

20 Q. Approximately how many? Give us a rough estimate.

21 A. Maybe a hundred.

22 Q. Okay. Have you counseled gay and lesbian parents who have
23 adopted or fostered children?

24 A. Yes.

25 Q. What types of issues do you address when you counsel

1 families with gay or lesbian parents?

2 A. Most of the same kind of issues that other families, you
3 know, encounter. Around adoption issues, it often has to do
4 with how do we talk to a child about adoption, particularly how
5 do we help them, how do we explain some of the more difficult
6 background issues that the child has faced: Abuse, neglect, a
7 birth parent who might have been a drug -- drug addicted or had
8 other kinds of problems.

9 So we help them to, to figure out how to talk to those
10 children about those issues in a way that doesn't unduly demean
11 the child's heritage.

12 Q. Do you counsel families who have experienced the, the
13 experience of divorce?

14 A. Yes, very often. I do a lot of custody work for the
15 courts. And I work with those families both sometimes -- not
16 the same families. I can't be an evaluator and a counselor in
17 the same case. But I often work with families after the
18 divorce or sometimes before counseling.

19 Q. Have you counseled children who have experienced divorce?

20 A. Many times, yes.

21 Q. Is that a significant percentage of your caseload?

22 A. It's a significant percentage, yes.

23 Q. Have you done any work evaluating children for court
24 proceedings?

25 A. Quite often; continue to do.

1 Q. Have you ever been qualified to testify, testify as an
2 expert witness in cases involving adoption issues?

3 A. Many times.

4 Q. How many times, approximately?

5 A. Qualified, that means I was testifying. Probably 40, 50
6 times.

7 Q. Have you ever been qualified to testify as an expert
8 witness in cases involving the well-being of children in -- of
9 same-sex parents?

10 A. Yes.

11 Q. How many times?

12 A. About ten times.

13 Q. Have you ever been involved in a marriage equality case?

14 A. Yes. I was one of the experts in the Hawaii same-sex
15 marriage case in the mid '90s.

16 Q. Your CV lists the Donaldson Institute. I think you've
17 touched upon that a little bit. Can you describe your work
18 there?

19 A. Sure. The Donaldson Adoption Institute, which is located
20 in New York City, is a nonprofit think tank. It's arguably the
21 preeminent think tank on adoption issues in the country.

22 Our primary mission is to foster the well-being of
23 children who are adopted to promote ethical adoption practice.
24 We do a lot of research in the area of adoption, training of
25 professionals. We are advocates, an advocates organization for

1 children in need of families, particularly kids coming out of
2 the foster system.

3 Q. Have you ever consulted with any government agencies?

4 A. I have. Pretty regularly, child welfare agencies in the
5 states here. And I've also counseled various ministries of
6 child welfare in England and Spain, and Italy, and Sweden.

7 Q. What sort of issues are you called upon to address with
8 state child welfare agencies?

9 A. A lot of it has to do with best practice issues in dealing
10 with adoption, training their professionals around -- you know,
11 establishing, you know, an appropriate atmosphere for doing
12 home studies.

13 Often times, it deals with helping them to set up or
14 to understand the need for post-adoption services. One of the
15 big emphases in adoption today is the need for ongoing
16 post-adoption services. And agencies are looking to figure out
17 how to do that in a timely and affordable manner.

18 Q. Have you ever received any honors in these areas?

19 A. I've received the U.S. Congressional Adoption Award. It's
20 called an Angel in Adoption Award.

21 MS. STANYAR: I move to qualify Dr. Brodzinsky as an
22 expert in the areas of child development, parenting by same-sex
23 couples and the well-being of their children, adoption and
24 fostering, including same-sex couples, and child and family
25 clinical psychology.

1 THE COURT: Counsel, would you like to voir dire or do
2 you have any objections? Other than your standing
3 objections --

4 MR. POTCHEN: Okay.

5 THE COURT: -- to the issue.

6 MR. POTCHEN: Other than the standing objection
7 regarding adoption, we have no objection.

8 THE COURT: Very well. He may be qualified.

9 BY MS. STANYAR:

10 Q. What is meant in the field of psychology by the term "child
11 adjustment"?

12 THE COURT: You know what? Why don't we take our
13 morning recess now. Then we won't have to interrupt his
14 testimony.

15 We'll take 15 minutes. That clock and mine are a
16 little bit off, but we'll start at ten after. Thank you.

17 (Recess taken, 10:50 a.m. - 11:08 a.m.)

18 THE CLERK: All rise.

19 THE COURT: Okay. You may be seated. Thank you.

20 You may proceed with your direct examination.

21 I understand that some people can't hear in the back.
22 We're going to try to get as close to the microphones as we
23 can. If you can't hear, raise your hand, let us know. Can you
24 hear now?

25 It's not better? Okay. We'll have to get I.T. in

1 here to find out why you can't hear back there.

2 Oh, you're instant messaging? Not I.T., though.

3 THE CLERK: I have to get it from them first, in order
4 to --

5 THE COURT: Okay. Can you ask, please. Thanks, Adam.

6 If you could ask them to call IT, tell them, and tell
7 them that they can interrupt us, because it's important; that
8 people can't hear in the back. We'll get it, we'll get it
9 taken care of, ASAP. So we'll get the people in here.

10 We're going to proceed. And, Ms. Stanyar, if you can
11 talk a little bit louder.

12 MS. STANYAR: Okay.

13 THE COURT: I know that's not your fault. It's the
14 mic. system.

15 MS. STANYAR: I pushed it away.

16 THE COURT: Great.

17 MS. STANYAR: It was scaring me.

18 THE COURT: That's fine. No. You have to be close
19 because it's also picking it up.

20 MS. STANYAR: Okay.

21 THE COURT: Not that close. I think you're fine.
22 They'll tell us. Because these microphones apparently they,
23 they took off the sound system and put it into the, the piping
24 into the other room. But we'll figure it out, we'll make sure.
25 It's important. This is a public courtroom, it's important

1 that everybody see, everybody hear. If you can't see and you
2 can't hear, let us know. I know you can't right now, but
3 they're getting someone in here right away. Okay.

4 MS. STANYAR: Can I have the last question read back?

5 THE COURT: Well, I don't think there's the last
6 question. You were starting to go into your, to your --

7 MS. STANYAR: What was the one before my question that
8 I didn't ask? Do you, are you able to go back? Or no? I'm
9 sorry.

10 (Brief pause.)

11 I moved to qualify him as an expert.

12 THE COURT: Yes. And I agreed.

13 BY MS. STANYAR:

14 Q. What is the meant in the field of psychology by the term
15 "child adjustment"?

16 A. Child adjustment has to do with the ability of a child to
17 function in one or more areas of their life. So, for example,
18 the ability to function well --

19 THE COURT: Excuse me. One more second. I see our
20 I.T.

21 Hey, Bob, here's what's happening. The people in the
22 back -- you can't hear either? The people in the back can't
23 hear. Are these microphones on or what's causing the problem?

24 (Brief pause.)

25 THE COURT: Not only can they not hear mine, but they

1 can't hear everything.

2 MR. GRATHOFF: Sounds pretty good across the hall.

3 THE COURT: Yeah, across the hall, I'm sure it's good,
4 but the people back here can't hear.

5 Can you hear better? Can everybody hear better? Yes?

6 Okay. Good.

7 Carole, if you don't mind trying that mic, too.

8 MS. STANYAR: Testing 1.

9 THE COURT: How is that? Everybody hear better?
10 Perfect. I hope they can hear it in the other room, too. I
11 won't -- okay. Great. I'm glad you said something. So if you
12 can't hear or see, either this room or the other room, let us
13 know.

14 Okay. Let's go.

15 BY MS. STANYAR:

16 Q. I believe that you were talking about the term "child
17 adjustment."

18 A. Yes. It has to do with the child's ability to function
19 well within the normal range in one or more areas of life. For
20 example, is the child progressing normally, motorically. Is
21 the child developing normal attachments with parents and with
22 others. Is the child progressing through school, doing well in
23 reading, math, etc., etc., forming appropriate peer
24 relationships, developing positive self-esteem and, you know,
25 integrating sense of self in terms of identity appropriately.

1 So there are many areas of development that we look at in terms
2 of adjustment.

3 Q. In the field of psychology, has there been research
4 conducted to learn what family circumstances promote positive
5 child adjustment?

6 A. Yes. There's a tremendous amount of research.

7 Q. How is child adjustment measured?

8 A. Well, it's measured in a variety of ways. We, we look at
9 quality of parent-child relationships, we look at
10 symptomatology of a child, the behavior of the child, whether
11 the child shows any evidence of any type of problematic
12 behavior, progress in school, peer relationships and so forth.
13 And we do so with, we do so with, in a variety of ways, too,
14 different methods they used.

15 Q. All right. Has research identified any factors relating
16 to family circumstances that predict positive adjustment?

17 A. Yes.

18 Q. I'm going to ask you to look at the demonstrative here.
19 Can you tell us, are these the factors?

20 A. These are the primary factors that have been, time and
21 again, shown to be the key predictors of children's adjustment.

22 They are quality of parent-child relationships;
23 quality of the relationships between the parents. Harmonious
24 parents produce better adjusted children. Warmer parent-child
25 relationships produce better adjustment in children.

1 The characteristics of the parent, the styles that
2 they adopt, parental warmth and nurturance, emotional
3 sensitivity. The ability to employ age appropriate rules and
4 structure for the child.

5 And the kinds of educational opportunities that
6 children are afforded is important, as well as the resources
7 that are provided for the child, not only in the family itself,
8 but the resources that, from the outside, that impact the
9 family and the child in particular. And of course, the mental
10 health of, of the parents.

11 THE COURT: Excuse me. Bob, is everything working
12 good?

13 MR. GRATHOFF: Yes, it is.

14 THE COURT: Thank you, very much. We appreciate it.

15 Okay. I'm sorry. He was standing there. I wanted to
16 make sure everything was cool.

17 BY MS. STANYAR:

18 Q. Have studies looked at whether these factors predict
19 positive outcomes or positive child adjustment in families
20 other than married mother/father biological-parent families?

21 A. Yes. These are the predictors that, the key predictors
22 that predict child outcome regardless of the family form,
23 whether it's a two-parent married family, heterosexual, gay or
24 lesbian families, single parents, divorced families, families
25 of color, families from low SES status, that's socioeconomic

1 status or, you know, middle or upper socioeconomic status. All
2 families, these are the key predictors.

3 Q. Have they all been studied?

4 A. They've all been studied, yes.

5 Q. How well established in the field of psychology is it that
6 these factors that you listed are the factors that predict
7 positive child adjustment, regardless of family types?

8 A. It's very well established. The consensus in the child
9 development and family psychology literature is that these are
10 the factors that predict, you can open up any journal that's
11 studying this, and you'll see one or more of these represented.

12 MS. STANYAR: All right. I'm going to ask him to look
13 at Tab A of his binder. And here's where we're getting into
14 the point at which I'm going to lay a foundation for the
15 articles. And I think there's going to be an objection here,
16 but.

17 THE COURT: Okay.

18 BY MS. STANYAR:

19 Q. All right. Look at Tab A of your binder. Tab A.

20 A. I've got it.

21 Q. Yeah.

22 A. This is Tab A.

23 Q. First of all, could you identify the studies?

24 A. These are two articles. They are not empirical studies,
25 they are review articles, one by Michael Lamb that is entitled,

1 "Mothers, Fathers, Families and Circumstances: Factors
2 Affecting Children's Adjustment." It's a recent publication.

3 And the second is a chapter by Susan Golombok and
4 Fiona Tasker, which reviews social emotional development in
5 different types of families, particularly non-traditional
6 family forms.

7 Q. Do these articles summarize the body of research on the
8 factors that affect child adjustment?

9 A. Yes, they do.

10 Q. Are they representative of similar reviews of this nature?

11 A. They are.

12 MS. STANYAR: At this time, I would move to admit the
13 literature, these two.

14 THE COURT: Counsel?

15 MR. POTCHEN: Yes, your Honor. We're going to object
16 to, we'll start with these that we're objecting to.

17 This, apparently these are summary articles done by
18 people other than this witness. So these are summaries of the
19 research conducted by other people. That's hearsay on top of
20 hearsay. So this is not a summary even done by this witness.
21 And it is not a summary of even the people who are writing the
22 article.

23 So to the extent they are seeking to admit this, there
24 is no hearsay objection that would follow that this would be
25 admissible.

1 THE COURT: Counsel?

2 MS. STANYAR: Your Honor, we're in a unique situation
3 where we are proceeding both with our *Daubert* hearing, as to
4 all the witnesses that we objected to, and we're proceeding
5 with trial. So this is relevant for a number of different
6 reasons.

7 First of all, as to many of these articles that we're,
8 we're going to be talking about, Dr. Brodzinsky relied on them,
9 at least the ones that preceded his report of December 20th of
10 last year.

11 In addition, we don't intend on calling Dr. Brodzinsky
12 back. And so we are, we are, you know, trying to introduce the
13 rebuttal to the State's experts. They will -- they are going
14 to be talking about, for example, Loren Marks is going to be
15 talking about the research, but he stops at 2005 for some
16 reason. And so, you know, we want to, we want to talk about
17 that.

18 THE COURT: Well, I think the articles are not
19 admissible because they are hearsay, at least if not hearsay on
20 top of hearsay. However, Dr. Brodzinsky has been qualified as
21 an expert under *Daubert*, and all other standards, and he is
22 testifying as an expert. And he can certainly rely, if that's
23 what he did, on articles and studies and that he's done, and
24 others have done, because he's going to -- you've asked him --
25 you're going to ask him to render opinions. And so there's no,

1 there's no dispute at this point that he is an expert and he
2 may render opinions in the areas that you have indicated
3 before.

4 But the articles themselves would not be admissible
5 through this particular witness. And that doesn't mean that he
6 can't rely on them and talk about them in terms of putting his
7 opinion together. But I don't think the articles themselves,
8 not think, I know they aren't and, therefore, I'll sustain the
9 objection.

10 MS. STANYAR: I understand, your Honor. As I often
11 do, I may be trying to give you additional argument and legal
12 authority.

13 THE COURT: As you always do. I have no problem with
14 that.

15 MS. STANYAR: Okay.

16 THE COURT: But as I say, this one is going to be --

17 MS. STANYAR: I understand.

18 THE COURT: -- a very uphill battle. As I say, he may
19 use them in his testimony, and I suspect that he will because
20 he's an expert. And as an expert, he is allowed to do that.
21 But the articles themselves are not admissible under many
22 rules, the most important of which is hearsay.

23 MS. STANYAR: All right. Fine, your Honor.

24 BY MS. STANYAR:

25 Q. Is there research on the ways in which men and women parent

1 children in heterosexual couple families?

2 A. Yes, there are.

3 Q. What does the research indicate?

4 A. The research indicate there's a wide range of variability
5 between, for men and women, in how they parent. There's
6 variability. There's more overlap than difference. There's
7 variability from family-to-family. There's variability even
8 within the same family, depending upon whether you're parenting
9 a baby versus parenting a teenager. You would certainly,
10 either gender would parent the child differently. And there's
11 variability in how men and women parent from culture to
12 culture, as well.

13 Q. Does, does the research show any average differences in the
14 ways that mothers and fathers interact with their children?

15 A. Yes, it does, on average.

16 Q. Can you describe that?

17 A. Sure. Mothers tend to be more emotion focused. They tend
18 to be more calming and soothing with their children, with more
19 physical affection offered. They are more linguistically
20 oriented.

21 Fathers, in turn, are more playful, more boisterous in
22 their, in their interactions. They are a little bit more
23 task-oriented in their interactions.

24 But I would say that both men and women do the same
25 kinds of things; in other words, they can engage in the same

1 kind of behavior. It's a matter of distribution of different
2 behavior at different times, depending upon children's needs
3 and who is available for the child.

4 Q. Does the study of psychology consider these differences in
5 competency?

6 A. No. They are differences in style, not at competence.

7 Q. Are women more likely to be more skilled at parenting?

8 A. On average they probably are, because they spend more time.
9 And the more experience you have, the more skilled you become
10 in particular areas.

11 So women are, on average, more likely to be the
12 primary child care provider, more likely to feed and bathe the
13 child, more likely to take the child to different places, spend
14 more time with the child, and with time comes competence.

15 We know that when men spend more time, such as we're
16 finding a trend, you know, in terms of societal trends, men
17 spending more time being parents, and in some cases, men being
18 the primary care provider, we find that the same level of
19 competence occurs generally in men who are spending more time.
20 They look very much like what we see when women are spending
21 primary time.

22 Q. What is the reason for these stylistic differences?

23 A. Well, there's a couple of reasons. One is that it depends
24 on what role the person is playing. If you are feeding the
25 child or bathing the child, you're more directly involved with

1 the child. You're engaging more soothing behavior. You're
2 engaging more face-to-face interactions with the child. The
3 role elicits certain kinds of behavior. So the role that
4 people play, that they choose to play, that they negotiate
5 between themselves in terms of playing often elicits different
6 kinds of behavior.

7 But also, men and women socialize differently. We
8 socialize women, in general, in society to be more
9 emotion-focused. We promote emotion in women and we tend to
10 downplay the expression of emotion in men, on average of
11 course. And men are socialized, you know, to be more physical,
12 to be more, you know, more stoic in their emotions and so
13 forth.

14 So sometimes the socialization that men and women
15 experience growing up is brought into a family, and it impacts
16 on the kind of styles that they, they enact.

17 Q. Are you saying that only fathers engage in playful
18 activities with their children and the mothers don't do that?

19 A. No, of course not. In fact, probably, in an absolute
20 sense, probably mothers spend more time playing with their
21 children because they spend more time with their children,
22 period.

23 But in a relative distribution of time versus what
24 activities you're engaged in, men are more playful rather than
25 let's say in a soothing, calming sense, and women tend to spend

1 more time soothing and calming children relative to their
2 husbands.

3 Q. Are these differences in parenting style uniform across
4 couples?

5 A. No, they are not. There's quite, quite a difference from
6 couple to couple in distribution of, of the roles that people
7 play, of the kinds of interactions that they take -- that take
8 place and the kinds of behaviors that, that they manifest in
9 doing the same role, for example.

10 Q. Does the research suggest that children are better off if
11 their mothers adopt a typical maternal style and their fathers
12 adopt a typical paternal style?

13 A. No. There's no research that supports that.

14 Q. So, for example, if in, in a particular heterosexual parent
15 family, if the father happens to be more nurturing and soothing
16 and is less physically playful with the children, is it at all
17 harmful to the child?

18 A. No, it would not be.

19 Q. Is there any evidence that children need a male and female
20 parent for positive child development?

21 A. I assume you mean male and female in the same household?

22 Q. Yes.

23 A. The answer is no. It's not the gender of the parent that's
24 the key. It's the quality of parenting that's being offered by
25 whoever is there, husband or wife, two women, two men, a single

1 parent, as long as the factors that we listed up there are
2 present: Good mental health, good parent-child relationships,
3 what we call an authoritative parenting style, which is warmth,
4 stimulation, structure, and the availability of resources.
5 Then we're going to have a child who is much more likely to be
6 healthy.

7 Q. Do children in single-parent families, on average, do as
8 well as children in two-parent families?

9 A. No, they don't. On -- well, let me start by saying they
10 don't, but most children in single-parent families actually do
11 well. It's just on an on-average comparison. The reason --

12 Q. What does that mean? Because maybe you used this is a lot.

13 A. Oh.

14 Q. But what is an on-average comparison?

15 A. Well, when you take a group of single parents and a group
16 of two-parent families, we get a mean or an average of what
17 they are doing, and how the outcome is. And there's often an
18 overlap, there's always an overlap. And the difference between
19 the means is what we call the on-average difference. The means
20 could be very similar, but still statistically significant.

21 And most of the behaviors or the adjustments of
22 children in single parents would look like the behaviors and
23 adjustment of children in two-parent families. But on, excuse
24 me, on average, the, the children in two-parent families would
25 be doing a little bit better.

1 Q. What accounts for the higher rate of adjustment problems,
2 to the extent there are, in single-parent families?

3 A. There are a couple of reasons. First, let's talk about the
4 pathway to single parenthood. Many parents become single
5 parents following the break-up of a previous relationship.

6 Children who are the product of a previous failed
7 relationship experience, you know, the disruption of that
8 relationship. They frequently will experience the conflict
9 between the parents that preceded, unfortunately too often,
10 follows the break-up as well. So there's a lot of turmoil in
11 the child's life that leads the child ultimately to be raised
12 by that single parent.

13 Other times, parents become single parents, you know,
14 without the active involvement of the father. So the child is
15 born, but the father is just not involved in the child's life.

16 Both of those groups also have less resources. We
17 know that single parents are much less likely to, to be
18 economically as advantaged as two-parent families.

19 And anyone who is a single parent knows, or knows a
20 single parent, it's just more stressful. You are doing
21 everything by yourself. So you don't have someone else to help
22 in that regard.

23 Q. Would you say that most children raised in single-parent
24 families have adjustment problems?

25 A. No, they don't.

1 Q. Most?

2 A. Most are doing very well. You know, it's a matter of the
3 fact that many of these, most of these single parents end up
4 being described in very similar ways that we're talking about
5 the factors here, there. They are mentally healthy. They have
6 good parent relationships, they provide resources, and you
7 know, it works well for the child.

8 Q. When you say children don't need a male and female parent
9 to develop well, are you saying that moms and dads are not both
10 important to children?

11 A. Of course not. Moms and dads are important. They are
12 important as parents, though. They are not important as males
13 or females, women and men. It's what they bring to the, to the
14 parenting process are certain parenting qualities that we've
15 talked about up here, again. And it's those factors, not the
16 gender of the parent, that predicts to better outcomes.

17 Q. Is there a body of scientific research on same-sex parents
18 and their children?

19 A. There is, quite a bit.

20 Q. Is that research published in peer review journals?

21 A. Yes, it is.

22 Q. Have any of the studies appeared in top tier journals?

23 A. Yes, they have.

24 Q. What is the purpose of peer review?

25 A. Peer review ensures, or at least it protects against a

1 study being published that has poor methodology, that is using
2 inappropriate measures, that is doing inappropriate analyses or
3 drawing inappropriate conclusions from those analyses, or is
4 not integrating the findings into the body of literature in a
5 way that makes sense.

6 Q. Over what period of time has this research on gay and
7 lesbian parenting been accumulating?

8 A. Over 30 years now.

9 Q. In total, approximately how many peer reviewed articles are
10 there addressing parent -- are there addressing parenting by
11 same-sex couples or on the adjustment of children raised by gay
12 and lesbian parents?

13 A. Well over a hundred, probably getting close to 150 now.

14 Q. Can you say anything about the reputations of the
15 researchers working in this area?

16 A. Well, there's a large number of researchers working it.
17 But some of the top people are like Susan Golombok from
18 Cambridge University in England, and her colleague Michael Lamb
19 is also at Cambridge. Charlotte Patterson, at the University
20 of Virginia, very distinguished professor. Abbie Goldberg, a
21 younger, but very distinguished researcher at Clark University.
22 Nanette Gartrell, who is in San Francisco, a distinguished
23 researcher in this area. There are quite a few very
24 distinguished people who are working in this area.

25 Q. I'm going to ask you to turn to Tab B.

1 All right. Are these some samples of studies that
2 evaluated children raised in same -- in same-sex parent
3 families?

4 A. Yes, they are.

5 Q. Okay.

6 A. Samples.

7 Q. I'm going to have you identify them. We're not admitting
8 them, but we're identifying these studies.

9 A. Do you want --

10 Q. Yes.

11 A. One by one?

12 Q. Yes.

13 A. Okay. The first one is by Henny --

14 THE COURT: The microphone, just move it a little
15 closer.

16 THE WITNESS: Oh, I'm sorry.

17 THE COURT: Because they are in another room
18 listening.

19 THE WITNESS: Okay. The first one is by Henny Bos and
20 his colleagues. Do you want me to read the title?

21 BY MS. STANYAR:

22 Q. I'm sorry. Read the title.

23 A. Yes. "Lesbian and Heterosexual Two-Parent Families:
24 Adolescent-Parent Relationship Quality and Adolescent
25 Well-Being."

1 Q. Excuse me. Is Henny Bos a male or female?

2 A. Female.

3 Q. Okay. All right.

4 A. The second one is also by Henny Bos and her colleagues.

5 It's entitled, "Child Adjustment in Parenting and Planned
6 Lesbian-Parent Families."

7 Q. What year is that?

8 A. The first one is 2014. The second one is 2007.

9 The third article is by Raymond Chan and colleagues,
10 including Charlotte Patterson. Raymond Chan was a student or a
11 junior colleague of Charlotte Patterson. And it's entitled,
12 "Psychosocial Adjustment Among Children Conceived via Donor
13 Insemination by Lesbian and Heterosexual Mothers." And that
14 was published in 1998.

15 The fourth article is by Rachel Farr and colleagues.
16 And again that's Rachel Farr was -- is now a professor but was
17 a student at Charlotte Patterson. Charlotte Patterson is a
18 third author on this.

19 Q. Let me ask you, did you touch upon the Golombok/Mellish
20 2013 article?

21 A. Did I miss that one?

22 Q. Is that the one right before it?

23 A. I skipped him. I'm sorry.

24 So the, I guess the third article then is by Susan
25 Golombok and colleagues, including Michael Lamb, who is also

1 probably three, third or fourth distinguished professor of
2 child development in the world. And this is published in *Child*
3 *Development*. It's entitled, "Gay Adoptive Father Families:
4 Parent-Child Relationships and Children Psychological
5 Adjustment," 2013.

6 The fourth is *Rachel Farr, Stephen Forssell and*
7 *Charlotte Patterson*, published in *Applied Development Science*
8 in 2010 entitled, *Parenting and Child Development in Adoptive*
9 *Families: Does Parental Sexual Orientation Matter?*

10 And the fifth is *Michael Rosenfeld, Nontraditional*
11 *Families and Childhood Progress Through School*, published in
12 *Demography* in 2010.

13 Q. Are these examples of studies that evaluated children
14 raised in same-sex families?

15 A. Excuse me. Yes, they are.

16 Q. Have you, have you -- are you familiar with this
17 literature?

18 A. Yes, I am.

19 Q. Have you reviewed all of these?

20 A. I've reviewed these and, and many, many others.

21 Q. All right. And are these representative of the body of
22 research on same-sex parents and their children?

23 A. Yes, they are.

24 Q. With the exception of, I believe it's the Bos article from
25 2014, and that would have been February of 2014, with the

1 exception of that article, would you have relied on these
2 articles in forming, forming your opinions that you're going to
3 testify to today?

4 A. Yes, and obviously many other studies as well.

5 Q. Can you describe what this body of literature evaluated in
6 terms of parents and in terms of children?

7 A. The body of literature in this area evaluates both the
8 quality of parenting afforded children who were raised by
9 same-sex couples, versus heterosexual couples, as well as the
10 quality of the relationships of those parents, too.

11 And they also measured child outcome in a variety of
12 different ways. Child outcome will be measured probably
13 differently from one study to another, using different
14 measures. But generally, we're looking at psychosocial
15 adjustment. We're looking at gender role behavior. We're
16 looking at peer relationships. We're looking at school
17 functioning, school progress. We're looking at behavior and
18 symptomatology in some cases. We're looking at victimization
19 in other cases. We're looking at conduct problems and, and
20 related issues like illicit substance use and delinquency and
21 so forth.

22 There's a wide range of variables that are measured.
23 And these are all measured -- measures -- excuse me. These are
24 all variables that are known to predict long-term adjustment
25 difficulties.

1 Q. Let me ask you, and you may have touched on this with the
2 psychosocial thing. But did any studies assess children's
3 psychological well-being?

4 A. Yes. Many studies do.

5 Q. Did any of these studies have comparison groups of
6 heterosexual couples?

7 A. Yes. Most do.

8 Q. Did any of the studies evaluate children raised in planned
9 same-sex parent families, in other words, families created by
10 same-sex couples?

11 A. Yes, they, they do.

12 Q. Can you identify the studies that did that?

13 A. Well, there are the studies of planned lesbian families
14 that have conceived through donor insemination. So, Charlotte
15 Patterson's work is in this area, Henny Bos's work is in this
16 area, Susan Golombok is in this area, and there are others.

17 Q. We had mentioned a Farr -- Farr and Forssell?

18 A. Yes.

19 Q. Was that -- would that be one that involved planned
20 same-sex families or not?

21 A. I'm blocking on that. I'd have to go back and look.

22 Q. Did any of them involve families formed by assisted
23 reproductive technology or the use of donor sperm?

24 A. Yes. The ones that I've talked about generally are, are
25 studies of D.I. families, donor --

1 Q. Donor insemination?

2 A. Donor insemination, yes.

3 Q. Did any of the studies evaluate children adopted by
4 same-sex couples?

5 A. Yes. The Golombok, Mellish, including Michael Lamb does.

6 The Rachel Farr and Charlotte Patterson does, and other people
7 do as well.

8 Q. Do any of the studies on same-sex parents assess the
9 well-being of adolescents or young adults?

10 A. Yes. Charlotte Patterson and Wainwright do. Susan
11 Golombok does in some of her longitudinal work. Henny Bos does
12 in the 2014 article. There are a number of studies that look
13 at adolescents, and bordering on the adolescent/young adult
14 period.

15 Q. Do we have a study assessed on children raised by gay
16 fathers?

17 A. Yes.

18 Q. Can you identify some of the studies that evaluated gay
19 fathers?

20 A. Well, the study on adoption by Susan Golombok and Mellish
21 and Michael Lamb does, Rachel Farr and her colleagues do. Gay
22 fathers are included in other studies as well.

23 Q. What are the conclusions of the body of research on
24 same-sex parent families?

25 A. The conclusions are the --

1 MR. POTCHEN: That I'll object to on hearsay, your
2 Honor, the conclusions themselves. He can testify about the
3 studies, but he's bringing in what their conclusions are and
4 their opinions. Basically he's being used as a --

5 THE COURT: Sustained. He can testify as to what his
6 conclusions are based upon his research and based upon his
7 study and so forth, but not necessarily what somebody else's
8 conclusion was, because they are not here for cross. They are
9 not here for cross-examination.

10 MS. STANYAR: I'll have him answer your question.

11 THE COURT: No. It's your question, not mine.

12 BY MS. STANYAR:

13 Q. What is your opinion?

14 THE COURT: I made a ruling. My ruling is that he
15 can't testify as to their conclusions. He can testify as to
16 his conclusions that he reached as an expert, using all these
17 documents.

18 BY MS. STANYAR:

19 Q. What are your conclusions based upon the research that
20 you've reviewed?

21 A. My conclusions about the outcomes for children, based upon
22 this research, is that children of gay and lesbian individuals
23 show no discernable differences in outcomes and in general
24 characteristics, developmental characteristics, compared to
25 children of heterosexuals.

1 And the other conclusion that I reach is that the
2 parenting qualities of gays and lesbians are no different than
3 the parenting qualities of heterosexual individuals. And the
4 couple relationships of those who are parenting children are no
5 different in heterosexual families and gay and lesbian
6 families.

7 Q. All right. So are your, are your conclusions consistent
8 with the findings that we talked about?

9 A. Yes, they are.

10 Q. All right. Did the studies reach any conclusion about --
11 and it was kind of a longish answer, so we're going to make
12 sure we hit everything. Did the studies reach any -- or no.

13 Is your opinion -- what is your opinion about the
14 psychological well-being of children of same-sex parents?

15 A. My opinion is that their adjustment is, is the same as
16 children raised by heterosexuals.

17 Q. What is your opinion as to the educational development of
18 children of same-sex parents?

19 A. That it's the same as those raised by heterosexuals.

20 Q. What is your opinion as to whether or not children of
21 same-sex parents are able to form healthy peer relationships?

22 A. My opinion is that they form just as healthy peer
23 relationships as those raised by heterosexuals.

24 Q. Were the factors that predicted good child adjustment of
25 same-sex parent families any different than the factors that

1 predict adjustment in heterosexual families?

2 A. No. They are the same. When those -- there are studies
3 that not only address the issue of family structure, gay and
4 lesbian versus heterosexual, but they also incorporate family
5 process and resource variables of the sort that we're talking
6 about here.

7 And to a study, every one of those studies shows that
8 it's the family process and resource variables that predict
9 adjustment, not family structure.

10 Q. And are the findings consistent?

11 A. They are very consistent.

12 Q. What methodologies have researchers employed in their
13 studies of the adjustment of children raised by same-sex
14 parents, in terms of, first of all, talk about recruiting
15 samples.

16 A. Okay. We recruit samples in different ways. The majority
17 of the studies are used what are called convenience samples.
18 We, we take from the communities people who are readily, more
19 readily available. So if I wanted to do a study on children's
20 academic achievement, I might go to a school in a community,
21 get permission to work with that school and the families in
22 that, and pull from, the data from those children.

23 Similar kind of things are done, you know, in this
24 area. We recruit gay and lesbian families from various sources
25 that, without the assumption being that they are representative

1 per se of the broader population of gays and lesbians.

2 Q. We'll come back to that. But are there different methods
3 of assessment within this body of research?

4 A. Yes. We assess in a variety of ways. We do intensive
5 interviewing. We use structured --

6 Q. Interviewing of who?

7 A. Oh, I'm sorry. We do interviewing of, of parents, we do
8 interviewing of children, depending upon their age of course.
9 We do interviewing sometimes of teachers, and others that are,
10 you know, are part of the family system.

11 We use structured interviews filled out by parents, by
12 teachers sometimes, by the youth themselves, particularly in
13 the adolescent studies that focus on adolescents.

14 We do observations of parents and children interacting
15 with one another, usually around some kind of structured tasks.
16 Some studied, Henny Bos, for example uses daily diaries that
17 provide information about what's going on in the family.

18 Q. Do any use standardized testing?

19 A. Yes. Some use standardize testing, too.

20 Q. Okay. Do the studies look at subjects at one moment in
21 time or do they look at the subjects over time?

22 A. Both. The first is called a cross-sectional study where
23 you take a, a group of individuals at one point in the life,
24 kind of a slice-of-life look at them. Studies have looked at
25 children, you know, from very early childhood all the way

1 through adolescence that way. And there are other studies that
2 are longitudinal that follow a child or follow families,
3 children and their parents, from a particular point in time, to
4 a second or a third point in time.

5 Some studies have gone all the way through basically
6 the transition to, to young adulthood now, several studies
7 have.

8 Q. Are all of these methods accepted methods in the field of
9 psychology?

10 A. Absolutely. Over, I was going to say you can open any top
11 tier journal, *Child Development*, or *Developmental Psychology*,
12 or *Journal of Family Psychology*, you will find all of these
13 recruitment methods and methodologies and assessment techniques
14 represented in one or more studies in these journals.

15 Q. Is convenience sampling rare in the field of psychology?

16 A. No. It's the bread and butter of psychology.

17 Q. What are the sizes of samples in those studies that use
18 convenience samples to study children of same-sex couples?

19 A. It varies. It can be from a few dozen to over a hundred.

20 Q. How can you be confident in the results of studies that use
21 smaller samples like convenience samples?

22 A. Well, it depends on what you're trying to do. If you're
23 looking at a question of, of what is the relationship between a
24 variable such as family structure, what you do is you take a
25 group of individuals. You try to control for extraneous

1 factors like, let's say, income. We know that you want to
2 match for income, because income correlates with child
3 adjustment. So compare one group with another, and then you
4 replicate. You replicate it again and again. Not the exact
5 same study. You replicate the general question. Do -- does
6 sexual orientation, in this case, does sexual orientation, does
7 family structure make a difference in child lives.

8 We have now well over a hundred studies that have
9 replicated that question, again and again, using different
10 populations, different, in different areas of the country, in
11 different countries.

12 And so the assumption is when you get a pattern, a
13 consistent pattern over time, then the question -- then the
14 findings are valid and, and relate -- that relate to the
15 question of interest.

16 Q. Are you familiar with the term "statistical power"?

17 A. Yes.

18 Q. What is that?

19 A. Statistical power is the ability to detect a difference
20 between two groups that represent a true difference, you know,
21 as opposed to some random difference.

22 Q. And can you get sufficient statistical power with small
23 samples in the literature?

24 A. Statistical power is related to sample size. And when you
25 use small samples, sometimes you're not able to detect small

1 differences between two groups.

2 I would point out that even though, where we have
3 small samples in this, in this literature, but we are regularly
4 finding differences between groups, just not the differences
5 perhaps that the opponents of marriage equality are looking
6 for. We certainly find differences in parenting styles. So we
7 can detect, at least medium and large scale differences.

8 Sometimes we can detect small differences.

9 Q. Are you able to detect differences in maladjustment?

10 A. Generally, we can. Because the differences that were
11 generally -- the range of scores in these studies are generally
12 all within the normal range. So that if the difference is
13 small, they are really differences about normality, so to
14 speak, ranges, whether a person tends to be a little bit more
15 this way, or a little bit more this way. They are not -- we're
16 not talking about differences that are, that are failing to
17 detect gross maladjustment.

18 Q. When you're talking about this, this group of, this body of
19 research, the convenience sample, is there anything about that
20 body of research, considered as a whole, that makes you think
21 that it's unreliable in any way?

22 A. No.

23 Q. What is a representative sample?

24 A. A representative sample is a group of individuals that are
25 drawn from a larger group that we have reason to believe that

1 they are -- that they represent that larger group.

2 Q. What is a population study?

3 A. A population study is studying everyone in, you know, in a
4 particular population, a census. Studies that have used census
5 data or population studies because they pull from -- data from
6 everyone.

7 Q. Are representative or population studies commonly used by
8 psychologist?

9 A. No, they are not commonly used. We do use them
10 occasionally, but the bread and butter of developmental science
11 and family science is, in psychology, is convenience samples.

12 Q. Why not use representative or these broad brush population
13 studies?

14 A. Well, although there are some benefits, of course, to large
15 samples, the problem is that the small samples allow us to look
16 inside the family. We, when we're working with a smaller group
17 of individuals, we observe them. We intensively interview
18 them. It allows us to know what's going on.

19 Census data asks a few questions. It doesn't tell us
20 what's going on in a family. Large scale studies seldom
21 provide the ability, occasionally they do, but they seldom
22 allow the ability to look intensely inside the family.

23 And as a developmental scientist, what we're
24 interested in is what makes a difference in the family for the
25 child. What are the resources that parents bring into the

1 family, in terms of parenting styles, in terms of the
2 relationship that they have with children, in terms of their
3 relationship if there's a couple, that makes a difference in a
4 child's life. The only way to study that, really, is to get
5 actively involved with the families and get up close and
6 personal, so to speak.

7 Q. Is a representative or population-based standard essential
8 to assess the well-being of either children, of children raised
9 by same-sex parents?

10 A. In my opinion, no.

11 Q. Why not?

12 A. Because it doesn't ask -- population studies, like census
13 simply don't ask the questions that will allow us to assess the
14 critical factors that are, are relevant. Census data actually
15 doesn't even ask the very specific question of whether you're a
16 gay or lesbian, and so we have to infer from that, from what
17 information is available.

18 Q. What sort of variables do studies on gay-parent families
19 need to control for?

20 A. You need to control for a wide range of factors. You need
21 to control for the resources available. Usually, the proxy
22 variables are parent income or parent education. You need to
23 control for family stability.

24 Q. Let me stop you there. What, what does it mean to "control
25 for" a factor?

1 A. You either match the sample, so that children in the gay
2 and lesbian families are matched with children in heterosexual
3 families in terms of, so that the groups are, are the same in
4 terms of average parent income, or average parent education,
5 or, or the racial composition of the two groups.

6 We also are very concerned about family instability
7 and family transitions, particularly in this area, but in
8 general. We know that children who have experienced family
9 disruption through divorce --

10 Q. We're going to get to that.

11 A. Oh, I'm sorry.

12 Q. Let me just try to get you back over here.

13 A. Okay.

14 Q. Are there types of research for which a representative or
15 population-based sample is necessary?

16 A. Yes. If you want to know the rate of something, for
17 example, if you want to know the rate of children who are being
18 raised by gays and lesbians in the country, you need a
19 representative sample so that you can generalize to the general
20 population.

21 Q. You mention that there were some studies of children or
22 lesbian -- children of lesbian or gay parents that did use
23 population-based or representatives samples. Can you identify
24 a study that used a representative sample?

25 A. Wainwright and Patterson studies, they, they published

1 three articles, same sample set, but so it's not different
2 samples, but they used a national survey of adolescent health.
3 I may occasionally refer to it as the ADD health survey, A-D-D.
4 But it's an adolescent health survey. It's a survey of I think
5 12,000 or more representative teenagers.

6 This was an unusual study because they not only
7 collected survey data, but they actually interviewed the
8 adolescents as well, which is very unusual in large-scale data
9 sets.

10 So that's, those -- there are three publications from
11 them. Rosenfeld is a, is a population study, because he used
12 the census data.

13 Q. Is that Michael Rosenfeld?

14 A. I'm sorry. Yes. Michael Rosenfeld.

15 Q. Stanford University?

16 A. No. Yes, I'm sorry. Stanford University. I'm sorry. So
17 those are two examples of representatives -- representative
18 samples.

19 Q. All right. So if you're looking at the findings of
20 representative population-based or representative samples and
21 the findings from convenience samples, are the findings showing
22 up different?

23 A. They are not.

24 Q. Some of the defendants' experts the State defendants are
25 expected to testify that only long term, large-scale

1 representative samples provide reliable data on the well-being
2 of children of same-sex couples. What's your reaction to that?
3 A. I disagree completely. First of all, it makes the
4 assumption that, that somehow, knowledge about adults only
5 emerges in adulthood.

6 When you would have maladjustment in young adults or
7 middle-aged adults, it almost always is preceded by
8 maladjustment earlier in life. An example would be, you know,
9 delinquency behavior in the young adult, conduct problems.
10 Antisocial behavior is almost always preceded by problems in
11 childhood.

12 The literature in development science mostly focuses
13 on children and adolescents. We don't have studies going into
14 adulthood or middle-age, that's true, not in this area at
15 least. But we have really solid, reliable data on the
16 predictors of long-term adjustment. And there is --

17 Q. All children? You have solid research as to the predictors
18 of maladjustment as to all children?

19 A. All children. Exactly. And not just in, in the gay and
20 lesbian literature. But, you know, the kinds of measures that
21 are used in the, in this same-sex couple literature are the
22 ones that are used in other developmental science and ones that
23 we know do predict to maladjustment in young adulthood and
24 beyond.

25 So we have a lot of confidence in saying if we're not

1 seeing problems in early childhood, in middle childhood, in
2 adolescence in this group compared to heterosexuals, there is
3 absolutely no theoretical or empirical reason to expect that we
4 would suddenly see problems emerging when they are, you know,
5 in their late 20's or into their 30's and so forth. Just no --
6 it doesn't make any sense from both our theories and our data.

7 Q. How do you define adolescents? Up to what age?

8 A. Up to 18, let's say.

9 Q. All right. Let's go back. I don't know if you defined a
10 longitudinal study. Have you defined it yet?

11 A. I think I have, but.

12 Q. Are any of the studies of children of lesbian and gay
13 parents longitudinal?

14 A. Yes.

15 Q. Can you identify those?

16 A. Susan Golombok and Fiona Tasker followed a group of
17 individuals from failed -- who were recruited from failed
18 heterosexual marriages. They went into the young adult period,
19 early young adult period. Susan Golombok, in her fatherless
20 families studies have followed children, it's a separate study,
21 all the way now into, I think they are 17 or so, into the late
22 adolescent years, maybe approaching young adulthood, some of
23 them. Excuse me.

24 Henny Bos and his studies of D.I. families, donor
25 insemination families, have followed the children into roughly

1 I think they are 18, 19 years of age right now.

2 So we have at least three or four studies that have
3 followed children from earlier in life, in same-sex families,
4 in comparing them to heterosexual families through the
5 developing years into at least adolescence, if not into young
6 adulthood, early part of young adulthood.

7 Q. If you take the findings of the longitudinal studies that
8 you just talked about, and you take the findings of the other
9 studies, the convenience sample, the representative sample
10 studies, are the findings showing up consistent?

11 A. Yes, they are.

12 Q. Experts for the State are expected to testify that the
13 research methods used in the studies on same-sex families are
14 flawed, and thus, the studies are not reliable. What's your
15 reaction to that?

16 A. I completely disagree. That, that conclusion essentially
17 dismisses all of developmental, or most of developmental
18 science and most of psychology, since most of psychology uses
19 convenience samples.

20 Q. Experts for the State are expected to testify that we don't
21 yet have sufficient research to establish policy about same-sex
22 parents, because it's a nascent body of research. What's your
23 reaction to that?

24 A. It's hardly nascent. It's 30 years or more maybe, you
25 know, in its development with a hundred or more, maybe closing

1 in on 150 studies right now.

2 Q. One of the State's expert witnesses, Loren Marks, he's a
3 family studies professor, he did a review of the research on
4 gay parent families up until 2005. Has there been any research
5 in this area since 2005?

6 A. A lot of research. At least a couple of dozen studies that
7 have made direct comparisons between gay and/or lesbian
8 families and heterosexual families, as well as other studies
9 that have looked only at gay and lesbian families and looked at
10 the family process variables that predict adjustment within
11 those families.

12 Q. The research from 2005 to 2014, is it using all the
13 different methodologies we've just discussed?

14 A. It is.

15 Q. We've been talking about studies. I'd like to switch gears
16 for a moment to talk about your clinical experience with real
17 families.

18 You mentioned that you have clinical experience
19 working with families headed by same-sex couples. Is there
20 anything about your experience working with these families that
21 is inconsistent with the research findings that children's
22 adjustment is not affected by their parents' sexual
23 orientation?

24 A. Nothing. I mean, I've been working with gay and lesbian
25 families from probably the late '80s, 1980's to the present.

1 At any one time now in my clinical practice in California, a
2 third to 50 percent of the families I'm seeing are gay and
3 lesbian, usually adoptive families, but not always. And they,
4 they form families and parent their children in the same way,
5 just as in a healthy way as do heterosexual families.

6 Q. You've already testified as to your opinion on the impact
7 of parent sexual orientation on parenting ability and the
8 well-being of children.

9 Is there any basis for the assertion that children
10 raised by same-sex parents are at a greater risk of adjustment
11 problems?

12 A. In my opinion, no.

13 Q. How well established is it within the professional fields,
14 focused on children's well-being, that children raised by
15 same-sex couples fare as well as those raised by heterosexual
16 couples?

17 A. Very well. There is a consensus among all the major
18 professional organizations that focus on the physical and
19 mental health and welfare of children.

20 Q. What are those organizations?

21 A. You've got listed up there some of them, not all of them.
22 But certainly the American Psychological Association, the
23 American Psychiatric Association, the American Academy of
24 Pediatrics, the American Academy of Child and Adolescent
25 Psychiatry, the National Association of Social Workers, Child

1 Welfare League of America. And there are others.

2 Q. To your knowledge, have all of these professional
3 organizations issued policy statements that are supportive of
4 same-sex parenting?

5 A. Yes, they have.

6 Q. Could you turn to the next tab?

7 A. "C"?

8 Q. Yes. All right. This is a policy statement from the
9 American Psychological Association. Are you familiar with it?

10 A. I am, yes.

11 MS. STANYAR: I move for its admission.

12 MR. POTCHEN: I'm sorry. What exhibit number is this?

13 THE COURT: It's not, it's not "C" in mine. But any
14 objection? It's on there.

15 MR. POTCHEN: What exhibit number would that be?

16 THE COURT: It would be 100 --

17 MS. STANYAR: 111.

18 MR. POTCHEN: 111 is not --

19 THE COURT: It's not in the book, but that's okay. I
20 mean, any objection?

21 MR. POTCHEN: Oh, 112. Here it is, 112.

22 MS. STANYAR: 112.

23 MR. POTCHEN: No objection, your Honor.

24 THE COURT: Very well. It will be received.

25 (Exhibit #112 received, 12:01 p.m.)

1 MS. STANYAR: And we also move to admit the list of
2 organizations, which is exhibit number?

3 MR. POTCHEN: That's a demonstrative exhibit?

4 MS. STANYAR: Yes.

5 MR. POTCHEN: Well, you wouldn't admit a demonstrative
6 exhibit.

7 THE COURT: 110 will be admitted as a demonstrative.

8 MR. POTCHEN: Okay.

9 (Exhibit #110 received, 12:01 p.m.)

10 THE COURT: Is there -- while we're thinking about it,
11 all the demonstratives, do you have them?

12 MS. STANYAR: They are all in your book.

13 THE COURT: Okay. But in separate sections? Not all
14 at once. That's okay.

15 MS. STANYAR: They are just as they kind of come up.

16 THE COURT: I didn't see the other one. What's the
17 exhibit number for the one that the doctor testified to the
18 factors? They may be in here, but let's --

19 MS. STANYAR: One moment, Judge.

20 THE COURT: That's okay. Just because I'm trying to
21 keep track. I can look.

22 MS. STANYAR: Oh, the exhibit list identifies -- the
23 exhibit list that's in the front of your bench book.

24 THE COURT: Oh, okay.

25 MS. STANYAR: Identifies which exhibit. This would

1 be -- okay. So the exhibit that would --

2 THE COURT: Oh, I see. It would be 101.

3 MS. STANYAR: Yes.

4 THE COURT: That's fine. Good. I didn't see the list
5 and I didn't see 101.

6 Perfect. Thank you. You may proceed.

7 MS. STANYAR: All right.

8 BY MS. STANYAR:

9 Q. What is the policy statement with respect to same-sex
10 parenting and the outcomes for children of the American
11 Psychological Association?

12 A. Do you wish me to read this?

13 Q. Yes.

14 A. Okay.

15 THE COURT: You don't have to read it, because it's an
16 exhibit already.

17 THE WITNESS: I'm sorry. There is no scientific basis
18 for concluding that lesbian mothers and gay fathers are unfit
19 parents on the basis of their sexual orientation. Overall, the
20 results of research suggest that development, adjustment and
21 well-being of children of lesbian and gay parents do not differ
22 markedly than that of children raised by heterosexual parents.

23 BY MS. STANYAR:

24 Q. Do you believe this policy statement, which you just read,
25 accurately summarizes the state of the social science research

1 on the effect of gay and lesbian parenting on child adjustment?

2 A. I do.

3 Q. Is it consistent, not identical, but is it consistent with
4 the policy statements with some of the other organizations that
5 we talked about?

6 A. Yes, it is.

7 Q. You mentioned the Child Welfare League of America. Can you
8 describe that organization?

9 A. The Child Welfare League of America is an organizing body
10 that sets best practice standards for adoption and foster care.
11 It's a governing body for adoption agencies.

12 Q. Have you heard of a group called the American College of
13 Pediatrics?

14 A. I've heard of them, yes.

15 Q. What do you, do you know about this group?

16 A. I don't know much about them, except that I know that they,
17 they oppose marriage equality and parenting in adoption by gays
18 and lesbians. I've seen them referenced in articles by
19 opponents of gay and lesbian adoption in parenting.

20 Q. Is the American College of Pediatricians the mainstream
21 recognized professional group within the field of pediatrics?

22 A. In my view, yes.

23 Q. Okay. And that's distinct from this other group, the
24 American College of Pediatrics?

25 A. Yes.

1 Q. All right. Does the American College of Pediatrics publish
2 a journal, a peer review journal?

3 A. I don't know of any. The premier Journal of Pediatrics is
4 published by the American Academy of Pediatrics.

5 Q. Experts for the State are expected to offer the opinion
6 that a basis for limiting marriage -- okay. I may have
7 confused those two.

8 Which of those two is the mainstream group?

9 A. The American Academy of Pediatrics.

10 Q. Experts for the State are expected to offer the opinion
11 that a basis for limiting marriage to heterosexual couples is
12 that children are better off if raised by two biological
13 parents. What is your reaction to that?

14 A. Well, I would disagree. First of all, I would point out
15 that the vast majority of individuals who are raising
16 non-biological children are heterosexual individuals. Most
17 individuals who adopt children are heterosexual individuals.
18 Most children who conceive through donor insemination, other
19 artificial reproductive techniques, are heterosexuals. So the
20 vast majority of individuals are, of children who are being
21 raised by non-biological kin are being raised in heterosexual
22 families.

23 Secondly, from the perspective of adoption, we know
24 that the vast majority of adopted children are in the normal
25 range, and that they, they function generally the same,

1 particularly those who were placed as babies. It's the same as
2 children in -- raised by biological kin.

3 Q. Can children develop well, whether raised by biological or
4 non-biological parents?

5 A. Absolutely.

6 Q. The experts for the State are expected to testify that the
7 importance of a biological parent-child relationship to
8 children's positive adjustment is evidenced by studies showing
9 poorer outcomes among adopted children and children in
10 stepfamilies. I have some questions related to this.

11 First of all, starting out with adoptive families.
12 And to be clear, in this section, I'm talking about adoption
13 from -- adoption of children from outside the family, as
14 opposed to stepparent or second-parent adoption.

15 Is it correct that adopted children have poorer
16 adjustment on average than non-adopted children?

17 A. Yes. On average, they do show poorer adjustment. It has
18 less to do with being adopted, though, than the factors that
19 correlate with adoption.

20 Q. Do you know what causes more adopted children to have
21 adjustment problems?

22 A. Yes, I do. Shall I --

23 Q. Yes.

24 A. -- enumerate them? Okay. First, there is genetic risk.
25 Adopted children are more likely to come from families that are

1 more at risk for genetically-based problems. We see that
2 especially in children who are being adopted from the child
3 welfare system, which is the predominant type of adoption in
4 the U.S.

5 Parents who have had -- who have their rights
6 terminated, those rights are terminated for a reason, often
7 based in behavior or character --

8 Q. Let me just ask you, let's go back to the genetic risk.
9 What do you mean by more -- adopted children are -- have
10 genetic risk? What do you mean by -- give us an example.

11 A. What I mean --

12 Q. Real world.

13 A. Real world, they are more likely to come from families who
14 have conduct problems, or come from families who are drug
15 addicted or alcoholic. These characteristics, conduct
16 problems, antisocial behavior, substance abuse, have a strong
17 genetic component to it so that they inherit the susceptibility
18 for, not just for those particular problems, but for problems
19 in general. So there's genetic risk.

20 There's also prenatal risk. Again, adopted kids are
21 more likely to come from birth parents who use substances
22 during the prenatal period, particularly from the, children
23 from the foster care system.

24 Also, adopted children come from birth parents who
25 experience a high-stress pregnancy. It's almost by definition

1 a high-stress pregnancy. And we know that prenatal stress is
2 linked to the, the exposure to prenatal hormones that can alter
3 brain development and impact on children, not just immediately,
4 but long term, so that there is prenatal risk involved.

5 And then the more serious issues is what happens to
6 the child after the child is born, but before they enter the
7 adoptive family. So some children are adopted because of a
8 history of neglect. Not because they're -- but they are free
9 for adoption because a history of neglect.

10 Q. What do you mean by free for adoption?

11 A. Oh, parental rights from the biological parents are
12 terminated by the state for cause. And then that frees the
13 adoption, the child to be adopted by either kin or non-kin.
14 And we're talking about non-kin adoptions now, I think.

15 Q. Okay. So you're just talking about post birth experiences.
16 You talked about abuse and neglect history. Is there anything
17 else?

18 A. Multiple foster placements. Children in foster care,
19 unfortunately, are not in stable placements. The average child
20 is in multiple foster placement. Each change creates trauma
21 for the child.

22 And what we see is that as children move from home, to
23 home, to home, it increases their risk for adjustment
24 difficulties. And so by the time these children enter the
25 adoptive family, they are already disadvantaged for these

1 reasons.

2 Q. Is there a difference in outcomes between children adopted
3 during infancy versus those adopted at older ages?

4 A. Yes. There's a big difference. There's relative -- even
5 though there's genetic risk and prenatal risk, on average, also
6 for the kids placed as babies, for the most part, the
7 differences between those children placed as babies and
8 non-adopted kids is very small.

9 I find it in my research, my older research, because I
10 worked with early placed kids, but there's been a recent meta
11 analysis which has looked at hundreds of studies. And it does
12 find significance difference, but very tiny differences between
13 infant-placed and, and -- children and non-adopted children.
14 The difference is much larger for older-placed children. And
15 these are the kids who are coming from the foster care system,
16 and some of them who are adopted from abroad as well.

17 Q. Is there any basis for the suggestion that adoptive parents
18 are less committed to their children than biological parents?

19 A. None. I mean, for anyone who works in the area of
20 adoption, you know how absolutely motivated and committed they
21 are. They are extremely committed, extremely motivated
22 individuals.

23 There was also a recent representative study -- a
24 study by Hamilton and his colleagues that looked at a
25 representative sample from the early childhood, longitudinal

1 study looking at the degree of investment or commitment of
2 adopted and non-adopted children. We find -- he found no
3 differences.

4 Q. You explained that it's factors other than the lack of
5 biological relationships that account for the higher rates of
6 maladjustment in adopted children.

7 Are there any unique issues that adopted children may
8 experience related to being adopted?

9 A. Yes. I've written a lot about this. A loss. Adoption is
10 built on experience of loss. The separation of the child from
11 the birth family creates a sense of loss.

12 Early placed children don't recognize it until they
13 are old enough to understand what adoption means. But the
14 issue of loss itself is not pathology. It doesn't lead to
15 pathology automatically. In fact, it seldom leads to
16 pathology. The critical --

17 Q. When you talk about pathology, are you talking about
18 maladjustment?

19 A. Yes. I'm sorry, sometimes use those words interchangeably.
20 It usually doesn't lead to maladjustment. The critical factor
21 is how parents manage that issue with their child.

22 So the big focus in adoption for the last 20 or 30
23 years is preparing parents to help their children to understand
24 the unique circumstances of their family life. To be able to
25 talk about the birth family in a respectful way. To build a

1 bridge for the child, a psychological bridge in some cases, an
2 actual literal bridge in other cases, for the child and the
3 birth family so that the child, you know, comes to experience
4 adoption in a positive way, and most certainly do.

5 Q. Is there a term used in your field to describe this kind of
6 challenges in adoption?

7 A. It's called a normative challenge. And many families
8 experience normative challenges. Families of color, for
9 example, have to help their children negotiate the
10 institutionalized discrimination that they are inevitably going
11 to encounter. And families, where there are disabled children
12 or disabled adults, have to help their children to deal with
13 that, that normative challenge of other people's reactions to
14 the characteristic in the family that sets them slightly apart
15 from, from other families.

16 So all families experience some levels of challenge in
17 one or more areas. And it's how it's managed in the family
18 that differentiates those who are maladjusted from those who
19 are not.

20 Q. Let's talk about stepfamilies. Is it true children living
21 in stepfamilies have poorer adjustments on average than
22 children living with both of their parents?

23 A. That is correct. Although, most children in stepfamilies
24 end up doing well, but there is a significant group difference.

25 Q. Why is that?

1 A. Well, stepfamilies are formed following a failed previous
2 relationship. So that example of a mother and father are
3 married. They have children. The parents divorce.

4 At some point in time later on, assuming the usual
5 circumstances where the child is primarily being raised with
6 the mother, mother may enter into a new relationship. Children
7 may be four, six, ten, whenever that new parent comes into the
8 family. We have not only that new family created, but we have
9 a non-visiting, excuse me, a non-residential, in this case, a
10 father with the child is also relating to as well. That's the
11 traditional notion of what family -- a stepfamily is about.

12 Q. Is it true there's a higher risk of abuse in stepfamilies?

13 A. That's correct.

14 MR. POTCHEN: Your Honor, I'm just going to have a
15 standing objection, I guess, to the issues of stepfamilies.

16 THE COURT: Yeah. I think we're getting a little off
17 of -- I'll sustain that objection.

18 MR. POTCHEN: Thank you.

19 MS. STANYAR: The reason this comes up is this was
20 something in their, in their report had to do.

21 THE COURT: Oh, I see. You don't intend to get into
22 it with your experts; is that correct? Because I think they
23 are kind of covering it so they don't have to recall. If you
24 intend to get into that with your experts, then we'll let her
25 continue.

1 MR. POTCHEN: I'll withdraw the objection, your Honor,
2 because apparently one of our experts is going to be.

3 THE COURT: That's fine. I understand. You may
4 proceed.

5 BY MS. STANYAR:

6 Q. Is it true that there's a higher risk of abuse in
7 stepfamilies?

8 A. Yes, there is.

9 Q. Why?

10 A. Although, although obviously most stepparents don't abuse
11 their children, but there's a higher level of risk for abuse.

12 Q. How much higher?

13 A. I don't, I don't have the statistics readily available.
14 Significantly higher, though.

15 Q. Why is that?

16 A. Well, there's an ambiguous relationship between the
17 stepparent and the child. The stepparent comes in and often
18 times is exerting authority, maybe too soon, or in ways that
19 the child may not expect or want.

20 That often leads to what we call a pattern of coercion
21 and control where a stepparent might set down a rule. The
22 child resists it. That creates frustration in the parent,
23 which leads often to a more rigid pattern of parenting, which
24 leads to more resistance. It escalates. And all of a sudden,
25 we have a scenario where abuse occurs, a child gets hit or

1 something like that.

2 Q. Is your testimony about this based upon your research or
3 based upon your own clinical experiences?

4 A. Oh, it's both.

5 Q. Experts for the State are expected to testify that when
6 same-sex couples create families with children through assisted
7 reproduction, one adult is not biologically related to the
8 child, so they are really just like stepfamilies.

9 Are such families created this way considered
10 stepfamilies in the research literature?

11 A. No, they are not. I have never seen in the donor
12 insemination literature the term "stepfamily" applied to the
13 nonbiological parent. The term second-parent is used.
14 Co-parent is used. Non-legal parent is used. Maybe
15 non-biological parent is used.

16 I've never heard that term "stepparent" used with
17 regard to that. And the reason is the step-parenting term is,
18 is used, almost always used when a family is formed later in
19 the child's life and a new person comes in, a person who is not
20 part of the planning of that family, even through donor
21 insemination or through adoption.

22 Q. Are you familiar with the family make-up of the plaintiffs
23 in this case?

24 A. I am.

25 Q. Would a family like theirs be considered a stepfamily in

1 the literature?

2 A. Not in the literature, no.

3 Q. Is there a base -- any basis to expect that outcomes for
4 children in families formed by same-sex partners through
5 assisted reproduction would be comparable to the outcomes of
6 children raised in stepfamilies?

7 A. It would be --

8 THE COURT: One more time.

9 MS. STANYAR: Is there any basis --

10 THE COURT: I'm not sure exactly what you asked.

11 Doctor, you may, but I'm not sure.

12 MS. STANYAR: Let me try it again.

13 THE WITNESS: Yeah. I got a little confused myself.

14 MS. STANYAR: I was heading this way and I jagged this
15 way.

16 BY MS. STANYAR:

17 Q. Is there any basis to expect that outcomes for children in
18 families formed by same-sex partners through assisted
19 reproduction would be comparable to the outcomes for children
20 raised in stepfamilies?

21 A. If you mean by stepfamilies, what we traditionally call
22 stepfamilies?

23 Q. Yes.

24 A. The answer would be no. We would expect children from D.I.
25 families to be doing better because they had not experienced

1 the family disruption and the introduction of an unfamiliar
2 adult later in their life.

3 Q. Do the children born to lesbian couples through donor
4 insemination have that experience of the prior family
5 dissolution?

6 A. No.

7 Q. Is there any research on children conceived through donor,
8 sperm or ova?

9 A. Yes.

10 Q. Can you describe that research?

11 A. Well, there's a good body of research. It's Susan
12 Golombok's research, Henny Bos's research, Charlotte
13 Patterson's research. Some of it is cross-sectional, but Henny
14 Bos's and Susan Golombok's is longitudinal. And it follows
15 these families from the childhood areas, the longitudinal ones,
16 into adolescence, and that border between adolescence and young
17 adulthood, measuring the kinds of things that we -- that other
18 studies dealing with same-sex parenting usually measure.
19 Things like psychosocial adjustment or gender role behavior,
20 peer relationships. Parent-child relationships is a big
21 factor.

22 So they measure comparable things. And the results
23 basically follow what we've already been talking about, and
24 that is, that children of lesbian families that are created
25 through donor insemination show no differences compared to both

1 heterosexual families created through donor insemination, as
2 well as heterosexual families that from natural conception.

3 Q. So let me just understand this. Does the research on
4 families formed by donor insemination compare outcomes of
5 donor-conceived children to children raised by two biological
6 parents?

7 A. Yes.

8 Q. And are you familiar with that research?

9 A. I am.

10 Q. What is your opinion about whether or not, the comparison
11 between those two groups?

12 A. There is no differences.

13 Q. What accounts for the fact, in your opinion, that children
14 conceived through donor insemination do just as well as
15 children in two biological parent families, but children in
16 stepfamilies don't do as well?

17 A. They don't experience the previous family disruption or
18 dissolution. They don't experience often the conflict that
19 preceded that dissolution. There may be some selection
20 factors operating also in stepfamilies, where these are
21 individuals who are probably less healthy anyway.

22 Q. Do the --

23 A. Meaning the adults, not the children.

24 Q. Do the studies of donor-conceived children involve
25 heterosexual couples or same-sex couples or both?

1 A. Both. Some of the research, yeah.

2 Q. How do the outcomes of children conceived by donor
3 insemination to same-sex couples compare with those conceived
4 by donor insemination to opposite-sex couples?

5 A. They are the same, and the parent qualities are the same
6 and the outcomes for the children are the same.

7 Q. Does this body of research on donor insemination tell us
8 anything about whether biological relationship between parent
9 and child itself predicts children's well-being?

10 A. It does. It says that biology itself is, is less important
11 than the parenting qualities. And these studies often measure
12 those family process factors that we talked about and that you
13 demonstrated before, and the predictors from parental warmth
14 and the harmony in the couple relationship, and the
15 parent-child relationship predict outcomes. But the family
16 structure, donor insemination is -- I'm sorry. Heterosexual
17 couples that are biologically related versus donor insemination
18 where you only have one biological parent and one
19 non-biological parent, the biology doesn't predict.

20 Q. The defendants' experts are expected to testify about three
21 studies, one by Mark Regnerus, one by Douglas Allen, and one by
22 Sotirios Sarantakos. I'm going to ask you some questions about
23 those.

24 Let's start with the Regnerus study. Have you
25 reviewed his study, "How Different Are the Adult Children of

1 Parents Who Have Same-Sex Relationships? Findings From the New
2 Family Structures Survey"?

3 A. I have, yes.

4 Q. Did Regnerus evaluate outcomes for individuals raised by
5 same-sex parents?

6 A. He did not.

7 Q. What did that study evaluate?

8 A. He evaluated young adults who responded affirmatively to
9 the question, has one or your other, or both of your parents
10 had a same-sex relationship. And those were the families who
11 were described as "gay and lesbian" headed households.

12 But the majority of those families identified in those
13 categories had experienced a previous failed heterosexual
14 unions.

15 Q. We are going to talk about that in a second.

16 A. Okay.

17 Q. Why do you say that this isn't an evaluation of outcomes
18 for individuals raised by same-sex parents?

19 A. Because --

20 Q. Why is it not that?

21 A. Because they weren't raised by same-sex parents. They
22 lived with same-sex parents for, for very limited periods of
23 time, in some cases, never. In some cases, as few as maybe a
24 few months. In some cases, up to maybe a few years. But the
25 majority of them had not lived with the parent and their

1 same-sex partner.

2 Q. Where had they started the early part of their lives?

3 A. The majority started in heterosexual unions.

4 Q. Who is Regnerus's heterosexual comparison group?

5 A. The primary comparison group are young adults who were
6 raised in intact marital families. He stripped away from that
7 group any family that had experienced divorce, step-parenting
8 families, and so forth.

9 So what he had was a group of individuals that
10 remained intact; they were heterosexual; they were married all
11 the way through the child's --

12 Q. From birth to 18?

13 A. From birth, you know, through when the measure was taken.

14 Q. All right. In the other group, did Regnerus control for
15 children's experience of parents divorcing and separated?

16 A. I assume the other group, you mean the gay and lesbian --

17 Q. Right.

18 A. -- identified groups?

19 Q. Well, no. I'm sorry. Let me back up.

20 So what did he do with the, in the intact family group
21 about the stepparents or the, or the divorce parent situation?

22 A. He pulled them out of that group and made them separate
23 groups.

24 Q. What about the lesbian mother, gay father group?

25 A. He did not pull them out. They, they included anyone who

1 had -- where the young adult had identified that at one point
2 in time, the parent had had a same-sex relationship, romantic
3 relationship.

4 Q. Did Regnerus' study evaluate children reared in families
5 that had been actually created by lesbian or gay couples?

6 A. No, he did not.

7 Q. Does the Regnerus study allow for any conclusions to be
8 drawn about the impact being raised by same-sex parents?

9 A. In my opinion, no.

10 Q. Why is that?

11 A. Because the young adults were not raised in same-sex
12 parents. They were raised, first of all, in heterosexual
13 relationships that disrupted and they experienced the family
14 disruption and the transition.

15 At some point in time, later in their life, one of
16 their parents entered into a same-sex relationship. Some of
17 those individuals never lived with those couples. Some of them
18 lived for shorter, you know, maybe up to three years, and some,
19 some of them lived for only a few months, and some never lived
20 with them.

21 Q. What is the significance of the fact that most of the
22 individuals in the lesbian mother and gay father groups had
23 been through divorce or separation of their parents, and that
24 none of the heterosexual comparison group had had that
25 experience?

1 A. Well, it's comparing apples and oranges as, you know, in
2 one case, you have a group that is set up to create the very
3 best possible outcome, the heterosexual families.

4 In the other group, you've grouped together people who
5 have experienced something in their life that is a known
6 contributing factor to child maladjustment, and not just child
7 maladjustment. It predicts also into adulthood, and that is
8 family disruption, family transitions. And they allowed that,
9 those people to remain in that group.

10 You couldn't have set it up, a study to more -- you
11 couldn't set up a study better to create differences.

12 Q. I'm going to read you a passage from the Regnerus study.

13 "Child outcomes in stable "planned" gay, lesbian,
14 bisexual families, and those that are the product of previous
15 heterosexual unions are quite likely distinctive as previous
16 studies' conclusions would suggest."

17 A. I agree.

18 Q. Has there been any professional criticism of the Regnerus
19 study?

20 A. A great deal of criticism.

21 Q. Did the Social Science Research Journal publish any
22 response?

23 A. They did. They asked for an internal audit to be done to
24 assess that study and to write a report, which was subsequently
25 published. And the report condemned the study and said it

1 shouldn't be published.

2 And I want to comment on that, because that process
3 that they went through is extremely rare. No study is perfect.
4 All studies have some flaws. And the researchers are always
5 obligated at the end of their article or end of discussion to
6 acknowledge whatever limitations. And we do.

7 The way that's handled in, in the field is, you know,
8 if you know the study is flawed and you're working in that area
9 and you're doing a study, you will point out, well, such and
10 such study had a flaw, so I'm going to try to overcome that
11 flaw in my study. And I will do a study that hopefully
12 overcomes that flaw to add, you know, more knowledge and more
13 valid knowledge to the field. So that's the most common way
14 it's dealt with.

15 Occasionally what happens is that a study comes to a
16 conclusion that simply is not supported by the results or
17 misrepresents the field in such a way that someone decides they
18 want to write a rejoinder or a reply, if you will.

19 One of the experts wrote a reply, you know, to Michael
20 Rosenfeld's study. In my own work, I've written a reply to
21 someone who wrote an article on adoption that I thought that
22 they misrepresented the field and their data didn't show what
23 they thought they showed. So I wrote an article and it was
24 published. Usually journals don't publish those things, but
25 sometimes they do.

1 What is extraordinarily rare is what happened here.
2 In fact, in my field, I've never seen it before. It's
3 happened, and I know in areas that I don't work in. But in my
4 field, this has never happened that a journal orders an
5 internal audit, publishes it and says this study should not
6 have been published. Just didn't happen very often.

7 Q. Do you agree with the audit?

8 A. I do. I agree with the conclusion it should not have been
9 published in the form that it was.

10 Q. Let's turn to the Sarantakos study. Are you familiar with
11 his 1996 article, "Children in Three Contexts: Family,
12 Education, and Social Development," published in Children
13 Australia?

14 A. Yes.

15 Q. First of all, is Children Australia a known scientific
16 journal?

17 A. Not to my knowledge. I've looked at several, what we call
18 data -- databases that list the professional journals. I've
19 never -- I didn't see it listed before.

20 Q. What did Sarantakos's study purport to show?

21 A. It purported to show that children who grow up in gay and
22 lesbian households do more poorly than children growing up in
23 heterosexual households.

24 Q. Is that supported by the data in the study?

25 A. It is not.

1 Q. Why not?

2 A. Because like the Regnerus study, all of his subjects came
3 from previous heterosexual unions, either failed marriages,
4 failed cohabiting situations, or women who were unmarried and
5 the father was not involved.

6 Q. So this is the same issue, kind of, that you had with the
7 Regnerus study?

8 A. Exactly. And even the author acknowledges in the
9 discussion that the, the potential confounding variable might
10 influence the result. He didn't have an ability to take it
11 into account, I guess.

12 Q. And the potential confounding variable was what?

13 A. Family disruption transitions.

14 Q. All right. And for the same reasons that you said that it
15 skewed the results in Regnerus, is that also true in the
16 Sarantakos?

17 A. Yes. It is a known, very, very well known predictor of
18 child and even adult maladjustment.

19 Q. Let's turn to the study by Allen. Are you familiar with
20 his study, Douglas Allen, based upon the Canadian census?

21 A. Yes, I am.

22 Q. What does the Allen study purports to show?

23 A. It purports to show that young adults, his study he had 17
24 to 22-year-olds raised in heterosexual families have higher
25 graduation -- graduation rates from high school than comparable

1 people raised in gay and lesbian families.

2 Q. In your opinion, is that conclusion supported by the data
3 in his study?

4 A. No, I don't believe it is.

5 Q. Why not?

6 A. Well, all he knows about is where the children lived for
7 the first -- for the last, excuse me, last five years.

8 Q. So from the date of the study back five years?

9 A. Right. So the study was published in 2006. I forget
10 exactly when the data was collected. I think it was a 2006
11 census. I'm sorry. The study was published later. It was a
12 2006 census. So we know where the children lived from 2001 to
13 2006, roughly. The children were 17 to 22 years of age. That
14 means that they were born roughly in the mid '80s, to the end
15 of the '80s.

16 Given that time period, very few children in gay and
17 lesbian families are the product of planned D.I. or even
18 adoption during that period of time.

19 So the assumption that I think we can safely make is
20 that certainly many, and maybe a majority of the children of
21 gay and lesbian families, were also the product of failed
22 heterosexual unions and that the, the gay and lesbian families
23 were formed later on. That being the case, the same problem
24 exists as in the Regnerus and Sarantakos studies.

25 Q. With respect to family dissolution?

1 A. With respect to the impact of family dissolutionment.

2 Q. So for a 22-year-old in Allen's study, you wouldn't know
3 what kind of family the subject lived in before age 17?

4 A. Yes.

5 Q. And for a 17-year-old, you wouldn't know where he lived
6 before age 12?

7 A. Yes.

8 Q. Okay.

9 A. And by the way, why that's important, high school
10 graduation or high school success, if you will, doesn't occur
11 in a vacuum. If there are problems leading to the failure to
12 graduate, we're going to see those problems earlier on in
13 childhood, during elementary school, during middle childhood,
14 beginning of high school.

15 We don't know where these children were living. We
16 don't know the circumstances. And if the assumption that we
17 make, based upon the time when these children were born and is
18 accurate, these are children who experienced family disruption.
19 And it's likely to have undermined their academic progress,
20 even before they entered the gay and lesbian families. He has
21 no way of knowing, because he doesn't know where these families
22 were living, where these children were living. I'm sorry.

23 Q. And for the same reasons that you talked about with the
24 prior studies, if there had been a lot of dissolution, does
25 that affect -- would you expect that to affect child outcomes?

1 A. Absolutely. I mean, we know that family dissolutionment
2 impacts academic progress.

3 Q. Did Allen say anything about how many of the respondents in
4 the same-sex groups were adopted?

5 A. Not how many, but he indicated that, you know, it's likely
6 a larger, a fairly large number would be, proportionately
7 anyway.

8 Q. Would that be expected to affect the graduation --

9 A. Yes. When I saw that as an adoption expert, it jumped out
10 at me, because gays and lesbians, if they are adopting, are
11 more likely to be adopting children from the child welfare
12 system, including in Canada, older children, children in
13 special needs. And we don't know anything about the early
14 adverse experience these children have. It's not measured in
15 this study. And as a result, we can't take it into account.
16 And it may well contribute to, at least in part, to some of the
17 differences that he found in, in graduation rates.

18 Q. We've been talking about the Regnerus study, the Sarantakos
19 study and the Allen studies. Do any of these studies allow for
20 conclusions about the impact of being raised in a same-sex
21 parent family?

22 A. In my opinion, no.

23 Q. Why not?

24 A. Because none of them -- certainly, the first two, we know
25 by the author's own acknowledgment that these were children not

1 of planned lesbian or gay families being raised from birth, but
2 children who had experienced a previous heterosexual
3 disruptions, family transitions and so forth. So we know that
4 that -- and I should say before they entered into the gay and
5 lesbian family.

6 And we can make, I think, a reasonable speculation
7 that's likely to have occurred also in Allen, giving the time
8 period for when these families were formed, and the fact that
9 planned lesbian families and planned gay families were not the
10 norm in the '80s.

11 Q. Do these three studies tell you anything about the
12 well-being of children raised in families created by
13 same-sex --

14 A. They do not.

15 Q. Do we not know if they were created or they probably
16 weren't created by same-sex couples?

17 A. Well, in the Regnerus, and the Sarantakos, we know that
18 they weren't created by same -- by two gay men or two lesbians,
19 you know, from birth onward.

20 Q. You testified that the research evaluating children raised
21 by same-sex couples shows that children fare as well as
22 children raised by heterosexual parents. And I understand that
23 that's your opinion.

24 Let me ask you this: As an expert in children's
25 development, if there were research -- the State claims this,

1 this is the case and we disagree -- if there were research
2 finding poorer outcomes among children of same-sex parents, in
3 your opinion, given your expertise, your clinical experience,
4 would that be a reason to exclude same-sex couples from
5 marrying?

6 A. Absolutely not. If there were -- and of course, my opinion
7 and the consensus of the field is that there's no difference.
8 But if there were differences between gays and lesbians, in
9 their family, I'm sorry, the children of gays and lesbians, all
10 the more reason to stabilize these families through, through
11 marriage. We know that marriage stabilizes families and it can
12 benefit children in many ways.

13 Also, there are many groups that have known
14 differences that we allow to marry. Families from low economic
15 stratas. The children of these families do much worse than
16 children from middle and upper class. There's no prohibition
17 on marriage for that, even though we know that they are doing
18 more poorly.

19 Parent education, parent, you know, predicts to child
20 outcomes. Parents who don't have a high school degree, for
21 example, or you know, have not gone very far in school do worse
22 than children -- in parents, you know, who have a high school
23 or college education and so forth. Again, we don't put
24 prohibitions on marriage for that. And we try to support as
25 best we can through all different kinds of means, including

1 legal means, such as marriage.

2 Q. Do same-sex couples have children in states where they
3 can't marry?

4 A. Of course they do. Yes.

5 Q. How do you know that?

6 A. There's demographic data on that. Gary Gates has published
7 demographic data showing that gays and lesbians are raising
8 children in every state in this country.

9 Q. Does excluding same-sex couples from marrying prevent them
10 from forming families with children?

11 A. Of course they don't. They've been forming families for a
12 long time.

13 Q. Does it matter to children's well-being whether or not they
14 have a legally recognized parent-child relationship with both
15 their parents?

16 A. Yes. Absolutely.

17 Q. Why?

18 A. Well, first of all, it affords them what sociologists and
19 social scientists, psychologists call social capital. That
20 means recognition, legitimate -- legitimization in the eyes of
21 society. This is a real family. We're no different than
22 anyone else. So it affords, you know, children that sense.

23 Now, young children aren't going to necessarily
24 recognize that. They'll be too young for that. But you get
25 older children into the teenage years, and they do recognize

1 that, that difference that others might -- how others might
2 view their families. So there's social capital.

3 Q. Are there any issues relating to psychological adjustment
4 relating to the absence of a relationship with a second parent?

5 A. There could very well be. For example, if -- there's an
6 ambiguity in the relationship. Is this my mother or is it not
7 my mother? Is this my father or is it not my father? Again,
8 young children won't recognize the legality of the
9 relationship, but older children will.

10 And there's also that sense of potential uncertainty
11 about is this relationship everlasting or not. If there's not
12 a legal relationship, and the couple breaks up, then the
13 guaranteed continuity of that relationship and the attachment
14 that has been formed between parent and child may suffer.

15 And we know an awful lot about disrupted attachments
16 and its impact, not just on children, but even predicting into
17 the adult years.

18 Q. What are the harms of broken attachments? How are they
19 manifested in young children?

20 A. Okay. Well, this is an area I work a lot in. I do a lot
21 of assessments of children who experience broken attachments.
22 And there are a variety of, of symptoms that we -- behaviors
23 that we see, which might be different from one age to another.

24 But for example, younger children are likely to show
25 sleeping problems. There will be nightmares, night terrors,

1 difficulty getting to sleep, calling out for parents because
2 they are afraid. There may be disruptions in eating patterns.
3 They may overeat and gorge themselves. They may under-eat.

4 There is often times disruption in their toileting
5 behavior. In other words, children who have gained control,
6 you know, begin to lose it again, so they begin to soil
7 themselves or wet themselves.

8 We see it in terms of increased anxiety, in depressive
9 symptomatology. We see it often times in the failure, in the
10 failure to progress normally in school. We see it in
11 insecurity in relationships. You know, once the secure
12 attachment has been broken, then the ability to trust in other
13 relationships gets compromised as well. We see it in almost
14 every area of human functioning.

15 Q. How about older children?

16 A. Older children, it can, it can lead to oppositionalism and
17 conduct problems. It predicts -- disrupted attachment predicts
18 to illicit substance use, to delinquency. It predicts to
19 failure to progress in school, in school problems, troubles at
20 school.

21 Q. And are these long-term effects?

22 A. These are long-term effects, yes.

23 Q. Can these harms from broken attachment occur even in cases
24 in which a parent does not have a biological or adoptive
25 parent-child relationship with the child?

1 A. Yeah. These are, these are outcomes that occur regardless
2 of whether the child is genetically related, or legally related
3 to the child.

4 Q. All right. Are there any economic implications from the
5 failure to have a legally recognized parent-child relationship
6 with the second parent?

7 A. Yes.

8 MR. POTCHEN: Objection, your Honor. I'm just going
9 to be arguing about economic. He's not an expert.

10 THE COURT: Sustained.

11 BY MS. STANYAR:

12 Q. Are there any studies having to do with the effect on a
13 child's access to health insurance?

14 MR. POTCHEN: Again, objection, your Honor. Access to
15 health insurance is beyond --

16 THE COURT: Sustained. Beyond. The reason for, the
17 reason for sustaining it is it's beyond his expertise.

18 Although he may be an expert, that's not what he was qualified
19 at this point.

20 MS. STANYAR: I understand.

21 BY MS. STANYAR:

22 Q. What if a legal parent can establish a guardianship for the
23 partner, would that remove your concerns, the recurrent -- the
24 concerns that you raise about the absence of a second, a legal
25 relationship with the second parent, in terms of psychological

1 effects?

2 A. In my opinion, it doesn't afford the child the same level
3 of permanency. In my experience in doing work in this area,
4 particularly court-related work, guardianship can be challenged
5 by a biological parent. So if the guardianship is challenged,
6 then the, the guarantee of continuity of relationship is
7 challenged then, too.

8 Q. So from the child's perspective, is there that sense of
9 permanency in a guardianship situation, based upon your
10 experience?

11 A. For young children, they don't know the difference. But
12 older children do recognize the difference. And no, it doesn't
13 afford the same level of permanency as a legal tie, either
14 through adoption or through birth.

15 Q. When couples are married, does it afford social benefits to
16 their children?

17 A. Absolutely.

18 Q. What are those?

19 A. Well, again, social capital. Marriage brings a recognition
20 by society that, that this is a legitimate family; that you are
21 the same as any other family. And children experience that.
22 And in the absence of it, they also experience the reverse.
23 They experience the sense that others view them as different,
24 and different can lead to feeling a stigma.

25 Q. When couples are married, does it afford any, any benefits

1 concerning stability?

2 A. Absolutely. Marriage, married couples stay together longer
3 than cohabiting couples. That benefits children. It also,
4 married couples guarantees the child's, legally guarantees the
5 child's relationship with both couples, should the couple break
6 up.

7 Q. You touched upon the economic resources of the family in
8 your report, is that right, as it relates to being married?

9 A. I did.

10 Q. You did touch on that.

11 Okay. When couples are married, does it -- and does
12 your clinical experience allow you to say anything or talk
13 about the effect of the absence of marriage on economic
14 benefits?

15 A. Yes.

16 MR. POTCHEN: Well, I'll object to him getting into
17 these areas. This is beyond --

18 THE COURT: I sustain the objection.

19 MS. STANYAR: Okay.

20 BY MS. STANYAR:

21 Q. How many children in the foster care system in Michigan are
22 freed for adoption, but waiting for a family to come forward to
23 adopt them?

24 A. About 3,500, a little bit more.

25 Q. Where does that number come from?

1 A. It comes from the federal government from the, what's
2 called AFCARS. It's A-F -- I'll just say the name. The
3 Adoption and Foster Care Analysis Reporting System.

4 Q. You've already talked about, you've already told us what it
5 meant to be freed for adoption, that the parents' rights have
6 been terminated.

7 What are the characteristics of the children who are
8 waiting to be adopted?

9 A. They tend to be older. They tend to have what are called
10 special needs, which means possible medical problems, possible
11 psychological problems, developmental delays, academic
12 problems. They are more often proportionately children of
13 color. They are often sibling groups.

14 Q. What happens to these children if there are no families
15 available to adopt them?

16 A. They linger. They linger, and unfortunately, as I said,
17 it's not necessarily lingering in a single home. Too often,
18 they move from home to home for a variety of reasons.

19 Q. Do any of these children reach adulthood without being
20 adopted?

21 A. Yes. Nationally about 26,000 a year age out, it's the
22 term. They age out of the foster care system.

23 Q. What are the future prospects for children who age out of
24 the foster care without getting adopted into a family?

25 A. They are bleak. We have increased evidence of

1 homelessness, increased evidence of criminality, increased
2 evidence of illicit drug use, alcoholism, increased likelihood
3 of entering into, into incarceration, mental health problems.
4 They have no family to rely on. Their resources are extremely
5 limited. The outcome is bleak for these, these young men and
6 women.

7 Q. Based upon your work as related to adoption, based upon
8 your work with the Donaldson Institute, do you have an opinion
9 about whether the inability for a couple, same-sex couple to
10 adopt jointly would be a barrier to that couple adopting
11 children out of the foster care system?

12 A. I do have an opinion.

13 Q. What's your opinion?

14 A. Well, after 30 years in this field, working with agencies
15 around the country, talking about the barriers, you know,
16 helping them to remove the barriers, and institute writing
17 about these barriers, we know that if we can remove barriers of
18 all sort, legal barriers, the atmosphere barriers that exist in
19 the agencies, in terms of lack of training or attitudes about
20 gays and lesbians and so forth, we were -- we will likely
21 increase the pool of suitable adoptive parents and decrease the
22 number of children who will continue to wait in foster care.

23 In other words, we'll get them into permanent homes.

24 Q. Why would --

25 MR. POTCHEN: Your Honor, based on that answer, he's

1 made it very clear that the foster care system and the
2 adoption, second-parent adoption are not relevant to the issues
3 at this trial. We again restate it.

4 THE COURT: I'm not sure, but do you have many more
5 questions?

6 MS. STANYAR: I don't. I only have like four or five
7 more questions.

8 THE COURT: This point has gone over. Go on.

9 MS. STANYAR: Okay.

10 BY MS. STANYAR:

11 Q. Why would this particular thing, the refusal to have a
12 second parent adopt, why would that be something that
13 discourages?

14 A. Well, one of the barriers has to do with the environment
15 that exists when people come to adopt. I cannot think of
16 anything more disrespectful to the couple coming in, to be sit
17 down and to explore adoption, they are very motivated, they
18 want to adopt, and they are told, well, you can adopt, but you
19 can't. You can be the legal parent, but you can't. You can --
20 you have a guaranteed relationship with this child forever and
21 the child has a guaranteed relationship with you forever, but
22 we're not so sure about you.

23 That really undermines, you know, the whole adoption
24 process. It has to create, in my experience, it creates
25 difficulties for the individuals. And I suspect, and what

1 people have shared with me, as I've gone around consulting,
2 it's a barrier that sometimes people just don't know how to
3 overcome.

4 Q. Does it discourage them from adopting?

5 A. I think, in my experience, it can discourage some, some
6 people for adopting.

7 Q. Has the Donaldson Institute published any documents
8 addressing barriers to adoption by same-sex couples?

9 A. Yes. We have three articles, two authored by Jean Howard,
10 and one authored by myself, all of which have recommended the
11 states to allow both joint and second-parent adoption so as to
12 remove legal barriers for permanency for children in foster
13 care.

14 Q. Why has the Donaldson Institute advocated for removing
15 barriers to gay couples jointly adopting?

16 A. We are a child advocacy organization. We focus on the
17 needs of children, particularly the needs of children in care.
18 There are not enough families available nationwide, and clearly
19 also in Michigan, because we have children who are waiting.

20 We need a larger pool of interested, well trained,
21 capable individuals, including gays and lesbians. Removing
22 these barriers will increase the pool. When we don't have --
23 when we have these barriers in place, and historically there's
24 been a lot of barriers, we know the pool is much smaller.

25 Q. You mentioned earlier that children awaiting adoption are

1 often children of color, children of special needs.

2 Is there any research on same-sex couples' openness to
3 adopt interracially?

4 A. Yes, there is. And they are more likely to adopt
5 interracially than heterosexual couples.

6 Q. Is there any research on same-sex couples' general openness
7 to adopting, at least in states where they are able to adopt as
8 a couple?

9 A. I'm sorry. Repeat that.

10 Q. Is there any research on same-sex couples' openness to
11 adopt generally?

12 A. Yes. There, actually, the census data and other large
13 scale data sets published by Gary Gates indicates that gays and
14 lesbians are approximately four times more likely to adopt than
15 heterosexuals, and six times more likely to foster a child than
16 heterosexuals.

17 Q. And lastly, in your opinion, how does Michigan's
18 prohibition against joint adoption by same-sex couples affect
19 children awaiting adoption out of foster care?

20 A. It increases the potential risk for them, that they will
21 continue to linger longer and suffer the experiences of foster
22 care and, perhaps, even continue to linger in care to the point
23 where they age out.

24 MS. STANYAR: Thank you, Doctor.

25 THE COURT: Okay. We will stand in recess until two,

1 at which time the Government -- the State, so used to the
2 Government -- the State will have an opportunity, as well as
3 Clerk Brown to cross-examine.

4 We stand in recess until two.

5 THE CLERK: All rise.

6 (Recess taken at 12:55 p.m.)

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2 **CERTIFICATE OF REPORTER**

3 We, Joan L. Morgan and Christin E. Russell, as
4 official court reporters for the United States District Court,
5 appointed pursuant to provisions of Title 28, United States
6 Code, Section 753, I do hereby certify that the foregoing is a
7 correct transcript of the proceedings in the above-entitled
8 cause on the date hereinbefore set forth.

9

10 s/ Joan L. Morgan, CSR

11 s/ Christin E. Russell, CSR

12 Federal Official Court Reporters

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